

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF NEW YORK.

3 \* \* \* \* \*

4 JOHN GORMAN,

5 Plaintiff,

6 -vs-

Civil Case No 1:14-cv-434

7 RENNSELAER COUNTY, SHERIFF JACK MAHAR,  
8 ANTHONY PATRICELLI, UNDERSHERIFF PATRICK  
9 RUSSO, COUNTY HUMAN RESOURCES MANAGER  
10 TOM HENDRY, COUNTY EXECUTIVE KATHLEEN JIMINO,

11 Defendants.

12 \* \* \* \* \*

13 EXAMINATION BEFORE TRIAL of

14 UNDERSHERIFF PATRICK RUSSO, held at Law Office of  
15 Patrick Sorsby, PLLC, 1568 Central Avenue, Albany,  
16 New York on October 28, 2015, commencing at  
17 10:16 a.m., before NORA B. LAMICA, Court Reporter  
18 and Notary Public in and for the State of New York  
19  
20  
21  
22  
23  
24

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Also Present:

John Gorman

I N D E X

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## S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that filing, sealing and certifications are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within Deposition may be signed before any Notary Public with the same force and effect as though subscribed and sworn to before this Court.

1       U N D E R S H E R I F F   P A T R I C K   R U S S O ,  
2               having been called as a witness, being duly sworn,  
3               testified as follows:

4       EXAMINATION

5       BY MR. SORSBY:

6           Q.    Good morning.

7           A.    Good morning.

8           Q.    Please state your full name for the record.

9           A.    Patrick Russo, R-U-S-S-O.

10          Q.    Now, Mr. Russo, you probably heard the  
11               instructions I gave earlier to Trooper --  
12               Investigator Hock?

13          A.    I did.

14          Q.    Have you been through a deposition before?

15          A.    Yes, I have.

16          Q.    So I'm going to give you some rules of the road.  
17               I'm going to ask you a number of questions. If  
18               you don't understand the question, please let me  
19               know and I can repeat the question, rephrase the  
20               question. The stenographer cannot record nodding  
21               of your head, so you have to verbalize all your  
22               answers.

23               If you need a break, let me know. I only  
24               ask that if I'm in the middle of a question, we

1 wait until you answer the question before we take  
2 a break.

3 From time to time, there may be objections.  
4 Actually, there will likely be objections from  
5 your attorney, and he can object to the form of  
6 the question, but he can't make speaking  
7 objections. So we're not going to get into  
8 discussions about relevance. And what that means  
9 is that I will say, "You can answer the  
10 question." So don't let the objections deter  
11 you. You still have to answer the question.

12 MR. MARTIN: Unless I tell you not to.

13 Q. Unless he tells you not to, and we'll proceed  
14 from there.

15 And at this time, do you have any questions  
16 about the instructions I've given you?

17 A. No, I do not.

18 Q. Mr. Russo, can you tell us who you're currently  
19 employed by?

20 A. Rensselaer County Sheriff.

21 Q. And in what capacity?

22 A. I am the undersheriff.

23 Q. And how long have you been employed as the  
24 undersheriff?

1 A. I'm in my twelfth year.

2 Q. And so that would put us at about 2003,  
3 thereabouts?

4 A. Actually, my start date is January 12, 2004.

5 Q. Is that the first time you became employed with  
6 the sheriff's department?

7 A. That's correct.

8 Q. And that was in the capacity of undersheriff?

9 A. That's correct.

10 Q. What did you do before that?

11 A. I was a City of Troy police officer for  
12 twenty-eight years.

13 Q. And in what capacity were you employed at the  
14 Troy police?

15 A. I actually was a patrolman for ten years, I was a  
16 uniformed sergeant for ten years, and I was a  
17 detective sergeant for almost eight years -- or  
18 eight years, whatever the balance adds up to  
19 there. I believe it's eight years.

20 Q. You started as a patrolman?

21 A. That's correct.

22 Q. And you moved to what position?

23 A. Uniformed sergeant. I was a sergeant, but I  
24 stayed in uniform.



1 Q. What were you promoted to?

2 A. Detective sergeant, and I was assigned to the  
3 narcotics unit.

4 Q. So as the detective sergeant, you were in the  
5 narcotics division the whole time?

6 A. Yes. I went up -- I believe I was. My last  
7 years, I believe I was with the narcotics unit.

8 Q. And can you tell us what type of special training  
9 you have as an investigator?

10 A. I don't remember all the schools, but I've taken  
11 basic criminal investigation, investigative  
12 schools, numerous narcotic related investigative  
13 schools, command and control schools, supervising  
14 multi-jurisdictional task force. So there was a  
15 lot of training. I can't remember it all, but I  
16 had basic in all, if not advanced.

17 Q. For investigations?

18 A. Some of them were connected to investigations.  
19 When you say investigations, not necessarily like  
20 a criminal investigation, but I was a clandestine  
21 lab investigator. So part of -- I mean, most of  
22 that school dealt with investigations, but more  
23 so towards the clandestine lab.

24 Q. Just briefly, what's a clandestine lab?

1 A. It's a meth amphetamine lab, a lab that's set-up  
2 in a remote location, how to determine where they  
3 are, what leads you took to locate them, and how  
4 to investigate them safely without injuring  
5 yourself or anybody else.

6 Q. So before you started working for the City of  
7 Troy, where else did you work?

8 A. Before I worked for Troy, I worked for Niagara  
9 Mohawk, which is now National Grid. I worked for  
10 General Electric for a short time. I worked for  
11 Trojan Contracting. I think those are the big  
12 ones. I mean, I worked for Bumstead Chevrolet  
13 when I was in high school.

14 Q. You've given us enough in that regard. Can you  
15 tell us what your education is?

16 A. I have a high school education and some college  
17 courses.

18 Q. Where did you go to high school?

19 A. LaSalle.

20 Q. What are some of the college -- do you have a  
21 degree, a college degree?

22 A. No, I don't.

23 Q. What are some of the college courses you took?

24 A. I think I might have gone to Hudson Valley for a

1 period of maybe six months, and whatever your  
2 entry courses are, I don't know, but school isn't  
3 my thing.

4 Q. Did you take any criminal courses?

5 A. I may have gone back under LEAP when the  
6 government had LEAP funds available for cops to  
7 go back to school, but I didn't go back for very  
8 long. So I would say that I don't have anything  
9 on record as far as courses taken in college for  
10 criminal activity.

11 Q. Okay. All right. Let's talk about your  
12 employment with the Rensselaer County sheriff's  
13 department. So you left the Troy city police  
14 department and went right to the Rensselaer  
15 County sheriff's department?

16 A. That's correct.

17 Q. And you went right into the undersheriff role?

18 A. That's correct.

19 Q. Tell us, is that a civil service position or an  
20 appointment?

21 A. It's an appointment. You serve at the pleasure  
22 of the sheriff.

23 Q. And who was the sheriff when you became  
24 undersheriff?

1 A. Jack Mahar.

2 Q. At that time, how long had he been the sheriff?

3 A. He actually started a few days before I did. He  
4 started on January 1st of that year, and I  
5 started on the 12th.

6 Q. Now, explain to me, as an outsider, your role as  
7 an undersheriff. The term is undersheriff, so  
8 you're under the sheriff, but what are some of  
9 your duties as an undersheriff?

10 A. Pretty much your duties are whatever the sheriff  
11 needs you to do. Some undersheriffs in  
12 facilities that do not have a chief of  
13 corrections or correctional superintendent, some  
14 of those facilities the undersheriff actually  
15 runs the jail. Other facilities, the  
16 undersheriff oversees highway, jail, civil. All  
17 of them come under his umbrella.

18 I think my -- most of my time there, I  
19 would say, was focused on highway patrol, because  
20 in our facility we did have a superintendent of  
21 the facility who was a colonel at the time I  
22 first started, Bob Loveridge (phonetic). And it  
23 was a rank structure there, so there were  
24 lieutenants.

1                   So primarily for the majority of my time  
2                   there, I was focused more on highway patrol.

3           Q.   Now, there would be times when the sheriff was  
4                   not there, he would have been on vacation or out?

5           A.   That's correct.

6           Q.   And did your role, at that point, change?

7           A.   Well, I mean, in the sheriff's absence, if  
8                   something was to happen to the sheriff, the  
9                   undersheriff could take over, and there could be  
10                  a gubernatorial appointment.

11                  So that's what the position is there for, if  
12                  something happens to the sheriff. If the  
13                  sheriff's on vacation, yeah, I could make  
14                  decisions. Most of them could wait until he came  
15                  back from his vacation. So it would change, but  
16                  not dramatically, let me put it that way.

17          Q.   Let me ask you a more specific question. When  
18                  the sheriff is not in Rensselaer County, when  
19                  he's out of the county and otherwise cannot  
20                  function in his capacity as a sheriff, who serves  
21                  in that role?

22          A.   I would say he still serves as sheriff. He could  
23                  delegate some decisions to me, but in today's  
24                  world with cellphones, and you could pick up a

1 cellphone and call somebody over in Europe -- I  
2 mean, it's not like years ago if the sheriff was  
3 out you couldn't get ahold of him.

4 So today I would say the role changes -- to  
5 answer your question, the role changes a little  
6 bit, but the sheriff is still ultimately the  
7 boss.

8 Q. As the undersheriff, what role do you play in --  
9 where are you -- can you explain the chain of  
10 command at the sheriff's department? Where are  
11 you in the chain of command?

12 A. I would be below the sheriff, right underneath  
13 the sheriff.

14 Q. And who falls right below you?

15 A. Well, on the correctional side it would be, right  
16 now, the chief of corrections. At one time it  
17 was, as I said, Bob Loveridge, who was  
18 superintendent. Titles have changed.

19 On the highway patrol side, it would be the  
20 captain of the highway patrol. They would be the  
21 next step down from me.

22 Q. During the time Mr. Gorman was employed at the  
23 sheriff's department, who was the director of  
24 corrections? Who was in charge of the

1 corrections department?

2 A. I don't know if -- I know Ruth Vibert was the  
3 chief. I don't know if Mr. Gorman had come in  
4 under Bob Loveridge or if he was there under  
5 Ruth Vibert?

6 Q. Do you know who Hal Smith is?

7 A. Yes.

8 Q. What role did he play?

9 A. Hal Smith was a lieutenant at one time and then a  
10 captain. When Vibert was there, Hal was a  
11 captain.

12 Q. What were his duties?

13 A. He would be a step down below the chief or  
14 superintendent, whatever you want to call it.  
15 And his duties would vary. Whatever the chief  
16 needed him to do, he would probably be assigned.  
17 He would oversee the lieutenant and so on down  
18 the line.

19 Q. And in the chain of command underneath you, you  
20 indicated there's a division between highway duty  
21 and corrections?

22 A. That's correct.

23 Q. As far as corrections went, who was next in the  
24 chain of command underneath you?

1 A. For corrections, it would have been either the  
2 superintendent or chief, whatever title you call  
3 him. The next one down would be a captain.

4 Q. And who were those two individuals at that time?

5 A. Well, in my tenure there were a few different  
6 ones, but at the time with Mr. Gorman, what we're  
7 talking about here, I believe it would be  
8 Ruth Vibert as the chief and Captain Smith,  
9 Hal Smith. And maybe -- I think he might have  
10 been there a little bit for Dave Hetman, too, but  
11 I'm not sure.

12 Q. Now, staying on the chain of command, to the  
13 extent that there is a personnel problem at the  
14 correctional facility, is the proper chain of  
15 command for the issue to go through the  
16 superintendent to you to the sheriff? How does  
17 that work?

18 A. Well, I think depending on the type it is. I  
19 mean, some disagreements could be handled on a  
20 sergeant's level. If not, it would probably move  
21 up to lieutenant, to a captain, and to the chief,  
22 and then it would come over to myself or the  
23 sheriff.

24 Q. You said it would come over to yourself or the



1           sheriff. So it would depend? When would it come  
2           to you, and when would it come to the sheriff?

3           A. For the most part, like I said, since I have been  
4           there, a lot of times I was only highway patrol.  
5           The majority would go to the sheriff. I'm  
6           talking about where disciplinary action would be  
7           taken, things to that effect.

8           Q. Since there's a chain of command, must the  
9           disciplinary matters fall through you before they  
10          go to Sheriff Mahar?

11          A. In a perfect world, yes. That's not always  
12          necessarily the case.

13          Q. Was there a procedure that required that?

14          A. That I'm not sure.

15          Q. So it sounds to -- well, strike that. Did there  
16          -- are there times when you deal with personnel  
17          issues?

18          A. Yes.

19          Q. Okay. And how is the decision made whether or  
20          not personnel issues should be brought to you or  
21          Sheriff Mahar first?

22          A. I think -- I would say that that has changed a  
23          lot over the years. I know when Bob Loveridge  
24          was there, and even Vibert in the beginning, she

1 would deal directly with the sheriff for most  
2 issues. Some of them wouldn't come to me.  
3 They'd go to him and it would be resolved. If it  
4 came to me, I would look at it, make my  
5 recommendation to the sheriff, and move on.

6 Q. Your office, is that located in the jail, the  
7 correctional facility?

8 A. No, it's not.

9 Q. Where was your office? At the time Mr. Gorman  
10 was employed, where was your office?

11 A. It's all one big building, the public safety  
12 building. The correctional facility is like on  
13 the west side, which would be along the river,  
14 and administrative offices for sheriff,  
15 undersheriff, confidential secretary and the  
16 highway patrol officers are on the other side of  
17 the building, divided by -- naturally, the  
18 correctional facility is a secure area, where  
19 ours isn't as secure.

20 Q. Within walking distance? It's the same property,  
21 correct?

22 A. Yes.

23 Q. Now, can you tell us about how often you would go  
24 to the jail, the correctional facility?

1 A. Myself, I didn't go there often. My function was  
2 primarily highway patrol.

3 Q. How did -- who established that you would be  
4 primarily responsible for the highway patrol?

5 A. I think the sheriff initially wanted me to focus  
6 on the highway patrol. I know the sheriff would  
7 go to the jail frequently, walk through the jail  
8 himself. And I occasionally would, or if I was  
9 attending a meeting over on that side or  
10 something.

11 Q. Can you tell us a little more what role you would  
12 play in the operation of the jail?

13 A. It has changed from time to time.

14 Q. I'm talking about the time when Mr. Gorman was  
15 employed.

16 A. Well, in a certain period during that, I don't  
17 know if it was from its inception, but at some  
18 time during that period, the sheriff did not want  
19 to handle anything that was associated with that,  
20 so then it started coming to my office. I don't  
21 recall the time, but sometime within that --  
22 Mr. Gorman's situation.

23 Q. There came a time when he didn't want to deal  
24 with -- he wanted you to handle the matters

1 coming out of the correctional facility?

2 A. Yes.

3 Q. All right. Okay. You don't recall right now  
4 when that time period happened?

5 A. No.

6 Q. Do you recall if it happened after Mr. Gorman  
7 filed his incident reports regarding  
8 Anthony Patricelli? Did it come after or before  
9 these events happened?

10 A. I would have to say it came during that time  
11 period. Before or after, I don't know.

12 Q. Mr. Gorman was employed for a period of time  
13 before the events happened?

14 A. That's correct.

15 Q. So you're saying that you became --  
16 Sheriff Mahar had you handle the issues at the  
17 correctional facility after the events Mr. Gorman  
18 has alleged? Is that your understanding, it was  
19 during that period of time?

20 A. I don't know if I handled that event from the  
21 beginning, but at some point that found its way  
22 to my desk.

23 Q. We can talk about that more, and maybe your  
24 memory will jog once we go over documents and

1 things.

2 A. All right.

3 Q. Do you remember the first time you met  
4 Mr. Gorman?

5 A. I would say probably at his interview.

6 Q. You interviewed Mr. Gorman?

7 A. I don't know if I interviewed him. I might have  
8 sat in on it.

9 Q. Who conducted the interview, do you recall?

10 A. That I do not.

11 Q. Did you look over Mr. Gorman's application for  
12 employment?

13 A. I probably did. I can't be sure.

14 Q. Now, you sat in on the interview. Is that  
15 another role that you had as the undersheriff, to  
16 sit in on interviews of perspective employees?

17 A. For the most part, I will sit in on an interview.  
18 At the present time, we have the chief and the  
19 captain and two lieutenants conduct the  
20 interviews. That had varied from time to time,  
21 but for the most part, if I'm around, I would sit  
22 in on the interview and not necessarily conduct  
23 it myself. I may ask questions, but --

24 Q. Can you tell us, more specifically, what role you

1 play in the decision to employ corrections  
2 officers at the sheriff's department?

3 A. Well, ultimately the decision would be the  
4 sheriff, but I could recommend or not recommend  
5 somebody.

6 Q. For Mr. Gorman's interview, do you remember  
7 taking notes during the interview?

8 A. I don't know. There may have been a  
9 questionnaire that was checked off when he  
10 answered questions, but I can't be positive.  
11 Sometimes they use those and sometimes they  
12 don't.

13 Q. What was your -- do you remember what your  
14 impression of the interview was?

15 A. I don't recall. It must have been favorable.

16 Q. All right. Now, you said you recall taking a  
17 question -- filling out a questionnaire. Where  
18 do you keep those questionnaires?

19 A. They would be filed with jail paperwork  
20 somewhere.

21 Q. And is it the jail's practice to keep those  
22 documents?

23 A. That I'm not sure. And I don't know if they were  
24 used on every series of interviews, because

1           everybody -- I mean, this chief that is there  
2           now, he has his way of doing things.

3           Q.    You just remember it being used --

4           A.    Sometimes they were done, sometimes they weren't.

5           Q.    But in Mr. Gorman's case, you remember them being  
6           used?

7           A.    I can't be certain, but I want to say probably  
8           around that time we were.

9           Q.    Okay.  So that's the first time you met  
10          Mr. Gorman.  On the questionnaire, do you believe  
11          that would have been kept in Mr. Gorman's  
12          personnel file?

13          A.    I'm not sure.

14          Q.    All right.  After you were part of the interview  
15          for Mr. Gorman, when is the next time you  
16          remember meeting him?

17          A.    I've seen him from time to time during the course  
18          of business or --

19          Q.    Okay.  Okay.  All right.  So when you -- and when  
20          would you see him?  Would you see him at the  
21          correctional facility?

22          A.    Sometimes.

23          Q.    Have you seen him outside of the correctional  
24          facility?

1 A. I may have, but I don't recall.

2 Q. All right. Can you tell us -- now, let me  
3 backup. You're going to be -- you've been  
4 elected to be the next sheriff?

5 A. Election Day is next week, but I don't have an  
6 opponent.

7 Q. Now, have you picked an undersheriff yet?

8 A. I have not.

9 Q. Is there a criteria for an undersheriff to be  
10 selected?

11 A. Criteria set by me?

12 Q. That's the question. Is it set by you?

13 A. The undersheriff would be my choice, and I have  
14 some ideas what I'm looking for.

15 Q. Now, did there come -- in your role as  
16 undersheriff, did there come times when you acted  
17 on behalf of the sheriff for personnel issues?

18 A. Yes.

19 Q. And did that include the writing of letters on  
20 behalf of the sheriff regarding personnel issues?

21 A. That's correct.

22 Q. And did that happen often?

23 A. I don't believe often. I think it happened more  
24 when I started to get more involved with the



1 correctional side, but I don't believe prior to  
2 that it happened often. It may have happened  
3 from time to time.

4 Q. Other than the letters you've written on behalf  
5 of the sheriff regarding Mr. Gorman, did you  
6 write any letters on behalf of the sheriff for  
7 any other personnel?

8 A. I'm sure I did, but I don't recall.

9 Q. Now, do you know who Anthony Patricelli is?

10 A. Yes, I do.

11 Q. And now -- and how do you know Mr. Patricelli?

12 A. Well, I've known him a long time, because I grew  
13 up in the south end and he grew up in the south  
14 end. I know when I ran my drug unit, I used him  
15 from time to time when we conducted street sweeps  
16 or undercover buys on the street because of his  
17 knowledge of the bad guys from seeing them in the  
18 correctional facility. So a lot of times he was  
19 able to identify somebody on the street and put a  
20 name to that person's face that we may have been  
21 looking for.

22 So I used him from time to time when I was  
23 employed by the City of Troy in the narcotics  
24 unit, with the approval of then Sheriff Dan

1           Keating.

2           Q.    So you're indicating that you had contact with  
3           Mr. Patricelli when you were a Troy detective?

4           A.    That's correct.

5           Q.    And he was working with the sheriff as a  
6           corrections officer at that time?

7           A.    I believe he may have been a master sergeant.  He  
8           was a sergeant.  Master sergeant was kind of an  
9           honorary title.

10          Q.    He was a sergeant?

11          A.    Yes.

12          Q.    And you're also indicating you know Patricelli  
13          outside of work?

14          A.    I knew him as a kid.  I worked the street in  
15          Troy, so I knew him, seen him out.  He was a  
16          young kid.  It was good practice to learn who the  
17          kids in the neighborhood were.

18          Q.    So since we're on that and that was your  
19          neighborhood, so to speak.  Did you ever have to  
20          arrest Mr. Patricelli?

21          A.    No.

22          Q.    All right.  Did you ever have to charge him with  
23          anything?

24          A.    No.

1 Q. Are you aware of any charges that were filed  
2 against him?

3 A. I'm aware of the charges --

4 Q. Other than these charges?

5 A. I don't believe so, no.

6 Q. And I'm talking about the period you were a beat  
7 cop there.

8 A. I don't remember him being arrested that I can  
9 recall.

10 Q. All right. We may talk about your relationship  
11 with him further down the road, but tell me about  
12 when you first met Sheriff Mahar?

13 A. Again, he grew up on the south end and I grew up  
14 on the south end, so I knew him since, I would  
15 say, high school days, if not before. You know,  
16 probably eighth grade on up through. He was  
17 married to my sister at one time. So I've known  
18 him, let's say, freshman year on through.

19 Q. And again, during the time in question that we're  
20 talking about when Mr. Gorman was employed, you  
21 had a relationship outside of work with  
22 Mr. Mahar, true? You would go to events?

23 A. We would go to events because of family ties. I  
24 don't know. They have got divorced. I don't

1 recall when that was, and if it was during the  
2 period of this. I'm pretty sure it was before  
3 this period here, but we would still see each  
4 other at family gatherings. We wouldn't actually  
5 hang together.

6 Q. So your relationship was familial, not sociable?

7 A. It would be sociable in terms of family  
8 gatherings, retirement parties, whatever, but --

9 Q. Would you go to events like Nascar or anything  
10 like that?

11 A. No.

12 Q. Now, you indicated you began shortly after  
13 Sheriff Mahar?

14 A. That's correct.

15 Q. Now, have you ever witnessed Sheriff Mahar become  
16 angry in the work setting?

17 A. Yes.

18 Q. And does that happen -- does that happen often?

19 A. Well, I don't think it happens as much as it used  
20 to. I think he used to get frustrated more at  
21 some things and he would get angry.

22 Q. And how would you know he became angry? Did he  
23 yell, scream?

24 A. People yell and their demeanor changes.

1 Q. Did he ever yell and scream at you?

2 A. Not that much, no. We didn't always agree on  
3 things, but he really didn't yell at me, I don't  
4 think.

5 MR. SORSBY: Can you mark this, please, as  
6 Exhibit 42?

7 (Exhibit 42 marked for identification.)

8 Q. I'm going to show you what's been marked  
9 Exhibit 42. Take a second to take a look at  
10 that.

11 A. (Witness complied.) Okay.

12 Q. Can you read the top label on that exhibit?

13 A. It says corrections bureau general order.

14 Q. Do you know what the corrections bureau is?

15 A. Yes, I do.

16 Q. What is corrections bureau?

17 A. Corrections bureau is the jail side of the  
18 sheriff's office.

19 Q. Now, this was a --

20 MR. SORSBY: Off the record one second.

21 (Discussion off the record.)

22 MR. SORSBY: Back on the record.

23 Q. This is one of the documents that was provided by  
24 the county pursuant to federal rules procedure 26

1 submission.

2 Now, this was provided to us, so is this  
3 document -- and you said this is a document that  
4 the sheriff's department may have; is that true?

5 A. This is a general order, which I know they've  
6 been revised different times from time to time.  
7 I know this is date of issue 21 March, 96.

8 I don't see a signature on this, like  
9 facility superintendent or something. Normally  
10 when we put orders into place now -- we revise  
11 them also. Our policies and procedures are  
12 usually signed by the sheriff. Like I said, I  
13 don't see a signature here, so I know what this  
14 exhibit is. I just don't know if it was ever  
15 implemented. I'm sure there's something  
16 implemented over there that deals with this.

17 I don't know if this is current, is what I'm  
18 telling you.

19 Q. All right. Now, from the time that you were  
20 employed by the sheriff, do you remember that  
21 there was always an order in place like this?

22 A. There was policies and procedures, and I'm sure  
23 they dealt with workplace violence.

24 Q. In looking at this, what do you understand this

1 order to be?

2 A. It tries to insure there's an atmosphere in the  
3 workplace where violence does not occur.

4 Q. I'll take that back from you.

5 MR. SORSBY: Can we go off the record?

6 (Whereupon, a brief recess was taken.)

7 MR. SORSBY: On the record.

8 Q. I'm going to show you what's been marked already  
9 as Exhibit 6, previously in a previous  
10 depositions. Take a look at that. Do you  
11 recognize what's been handed to you as Exhibit 6?

12 A. I see it says Rensselaer County Workplace  
13 Violence.

14 Q. Do you recognize this document?

15 A. I don't know if I've ever seen it before.

16 Q. Turn the first page over to the second page. Do  
17 you see the date at the top?

18 A. Yes.

19 Q. What's the date on that?

20 A. 3/15/2012.

21 Q. Are you aware that Rensselaer County had a  
22 workplace violence program?

23 A. Yes.

24 Q. Have you ever read the workplace violence

1 prevention policy statements before?

2 A. I don't know if I ever read this policy before.  
3 I know we were made aware of the workplace  
4 violence policy through Tom Hendry. I know what  
5 the intent of it is. I know what the body of it  
6 is. But this actual packet, I don't know if I've  
7 seen it.

8 Q. Now, did Thomas Hendry -- did there come a time  
9 that Thomas Hendry gave you a workplace violence  
10 policy program statement?

11 A. I don't think he provided me, personally, with  
12 one.

13 Q. How do you know there's a workplace violence  
14 policy for the county?

15 A. Because Tom Hendry says there is and our people  
16 know there are.

17 Q. How do they know that there is one?

18 A. They may have gotten one. The superintendent of  
19 the jail may have gotten a policy, or the sheriff  
20 may have directed that prior to me assuming  
21 duties at the jail.

22 Q. You're currently undersheriff?

23 A. That's correct.

24 Q. And you're going to be sheriff?



1 A. Yes.

2 Q. Do you have a copy of the Rensselaer County  
3 workplace violence policy?

4 A. Now?

5 Q. Yes.

6 A. I don't believe I do.

7 Q. Now --

8 A. I would say that probably the confidential  
9 secretary has this on file, and if I needed to  
10 refer to it, I would.

11 Q. Who is the confidential secretary?

12 A. Marcelle Swanberry.

13 Q. You don't currently have a workplace violence  
14 prevention statement at your office. Have you  
15 ever had a workplace violence prevention  
16 statement at your office?

17 MR. MARTIN: Object to the form.

18 MR. SORSBY: You can still answer.

19 A. I don't believe I have one in my office. It's  
20 probably with the confidential secretary, who is  
21 outside my office.

22 Q. Have you ever reviewed any policy regarding  
23 workplace violence prevention?

24 A. I probably have at some time, but I'm not sure.

1 Q. Did you read the policy when the incidents that  
2 Mr. Gorman has alleged in this case arose?

3 A. I don't think I read the policy. I was in  
4 contact with Tom Hendry.

5 Q. Okay. Did -- when -- now, did Mr. Hendry give  
6 any presentations or meeting on the workplace  
7 violence policy?

8 A. He did not to me, but he may have provided the  
9 jail -- the jail I'm sure -- well, I would say  
10 that the jail probably did some type of training  
11 when this came out, training on this.

12 Q. Can you explain to me how you came to understand,  
13 during the time in question when Mr. Gorman was  
14 employed, what the Rensselaer County workplace  
15 violence prevention policy was, if you knew what  
16 it was?

17 A. I believe at the time that Mr. Gorman's incident  
18 happened -- and again, I have to state that I  
19 don't know if I came in on the very beginning of  
20 his, but Ruth Vibert was the chief of  
21 corrections. And Ruth Vibert would have realized  
22 that this -- in her opinion, this had to be  
23 reported because it was a violation of this.

24 Q. Yeah, I know. We're going to get to the actual

1           specifics. I'm just trying to understand your  
2           knowledge of what the policy was. So we'll get  
3           to that.

4                   And so I'm asking, specifically as  
5           undersheriff, when and how you became aware of  
6           Rensselaer County's policy regarding workplace  
7           violence?

8       A.    It probably was through my conversations with  
9           Tom Hendry, where there was a workplace violence  
10          violation or alleged violation. And he handles  
11          the investigation into that.

12   Q.   Can you tell us if at the time he gave you a copy  
13          the policy?

14   A.    I don't believe I got a policy from Tom Hendry,  
15          no.

16   Q.   Do you recall there being a time that you have  
17          actually read the policy, or is this the first  
18          time you had seen the policy?

19   A.    I don't recall.

20   Q.   Now, while we're on the workplace violence, do  
21          you know who a Cliff McLean and a Scott Bouret  
22          are? Do you know who those two individuals are?

23   A.    Cliff McLean, and Bouret maybe, they are  
24          maintenance. Cliff McLean is actually a

1 maintenance supervisor, and Scott is one of the  
2 maintenance workers.

3 Q. Now, are those individuals still employed?

4 A. They are.

5 Q. Did there come a time that Scott filed a  
6 complaint of threatening behavior against  
7 Mr. McLean?

8 A. I'm not sure.

9 Q. Do you remember receiving, from the internal  
10 affairs division, e-mails to you that you needed  
11 to take action before the events between the two  
12 became escalated?

13 A. I don't recall.

14 Q. Scott is a janitor, but where in the building is  
15 he located at?

16 A. Their office is actually over by corrections, so  
17 anywhere you need them, they work. So they work  
18 if we need them over on our side, or if  
19 corrections needed them, they work over on that  
20 side.

21 Q. All right. Now, are you aware of a threat made  
22 by Mr. -- excuse me.

23 Are you aware of a situation that arose  
24 between Mr. Bouret and Mr. McLean?

1 A. I'm really not. I'm trying hard to remember. I  
2 don't recall an incident.

3 Q. Well, you know what, we can get back to that when  
4 we get a document that may refresh your memory on  
5 that.

6 All right. I want to stick on Exhibit 6, if  
7 you will. Now, we're just going to have to have  
8 you read from it. If you turn to the first page  
9 -- the first page --

10 A. Page 1.

11 Q. All right. Let's have you turn to the first  
12 page, not the page marked as Page 1.

13 A. Page 2?

14 Q. The first page after the cover sheet. Go ahead  
15 and read the first sentence for me.

16 A. "Rensselaer County has a zero tolerance violence  
17 policy, and considers the safety and security of  
18 its employees to be a priority."

19 Q. Did you understand that to be the policy  
20 regarding workplace violence at the sheriff's  
21 office, as well?

22 A. Yes.

23 Q. Do you understand that -- can you tell us if the  
24 Rensselaer County workplace violence policy was

1 the same policy -- was that policy adopted at the  
2 sheriff's department?

3 A. I think this was a county-wide policy that was  
4 adopted.

5 Q. So you understood this was effective at the  
6 sheriff's department, as well?

7 A. That's correct.

8 Q. And did you understand that the sheriff's  
9 department also had a zero tolerance for -- zero  
10 tolerance violence policy, and considers the  
11 safety and security of its employees as a  
12 priority?

13 MR. MARTIN: Object to the form.

14 A. Absolutely.

15 Q. Go ahead and read the second sentence for me, if  
16 you will?

17 A. "Therefore, threats, threatening behavior, acts  
18 of violence, and any related conduct, including  
19 but not limited to physical violence, verbal or  
20 written threats or intimidation, intimidating  
21 gestures or acts, and violence against property  
22 will not be tolerated."

23 Q. So did you also understand that this -- did you  
24 understand that this policy meant that threats of

1 violence were not tolerated?

2 A. That's correct.

3 Q. All right. I'm going to go down to the second  
4 paragraph. Can you start with the second  
5 sentence and read that to us, please?

6 A. Looks like we're starting with, "Threats,  
7 threatening behaviors, or other acts of violence  
8 executed off county property, that are directed  
9 at employees, are also in violation of this  
10 policy. Off-site threats include, but are not  
11 limited to, threats made via telephone, fax,  
12 electronic or conventional mail, or any other  
13 communication."

14 Q. Having read that, did you understand the county's  
15 policy to include threats of violence that were  
16 made off property?

17 A. Yes, I understand that.

18 Q. I'll ask you that. Did you understand the policy  
19 regarding workplace violence at the sheriff's  
20 department to include threats that were made off  
21 site, off location, against sheriff employees?

22 A. Yes.

23 Q. Did you understand that to include threats made  
24 by telephone, as well?

1 A. Correct.

2 Q. And can you read the third paragraph there for  
3 us?

4 A. "Employees found in violation of this policy will  
5 be subject to disciplinary action, up to and  
6 including termination of employment."

7 Q. So did you understand, during the period in  
8 question when Mr. Gorman was employed, that the  
9 policy for workplace violence required that an  
10 employee may be subject to disciplinary action,  
11 including termination if they violate the policy?

12 MR. MARTIN: Object to the form.

13 MR. SORSBY: You can still answer the  
14 question.

15 A. I understand this to mean that, yes.

16 Q. What did you understand the policy at that time  
17 to mean? If somebody violated the workplace  
18 violence policy at the sheriff's department, what  
19 were the ramifications?

20 MR. MARTIN: Object to the form.

21 MR. SORSBY: You can still answer.

22 A. Okay. I'm not sure if I was aware of it at the  
23 time, but I am aware of it after reading this.

24 Q. What do you understand the ramifications to be



1           for violating the workplace violence policy for  
2           Rensselaer County at the time in question?

3           A.    I don't know what I understood at the time in  
4           question.

5           Q.    Do you know, during the time in question when  
6           Mr. Gorman was employed, was there -- in addition  
7           to the Rensselaer County workplace violence  
8           prevention program, was there a workplace  
9           violence prevention policy for the sheriff's  
10          department separate from the county?

11          A.    I don't know that to be true. I know we have  
12          policies and procedures. Like I said before,  
13          several times they were changed. I don't know if  
14          there was something in place at the time. I'm  
15          not sure.

16          Q.    During the time in question, you understand that  
17          there was a policy in place, a workplace violence  
18          policy?

19          A.    Yes.

20          Q.    And during the time in question, what would be  
21          the consequence -- based on your understanding  
22          of the policy, what would be the consequence,  
23          based on a violation of the policy?

24                MR. MARTIN: Object to the form of the

1 question.

2 A. You can be subject to disciplinary action, up to  
3 and including termination.

4 Q. Other than Mr. Patricelli, were you aware of  
5 anybody that's violated the workplace violence  
6 program?

7 MR. MARTIN: Object to the form.

8 Q. Are you aware of anybody that's violated the  
9 workplace violence prevention program?

10 MR. MARTIN: Object to the form.

11 A. I'm sure -- again, we go back to what I  
12 testified before. I did not oversee a lot of  
13 activity at the jail prior to -- I think it was  
14 during the time Mr. Gorman here had his problems.  
15 And so I'm sure there were cases along the way  
16 that may have included some of this, and I don't  
17 know what the status was, but I can't tell you we  
18 did not have any, because I'm not sure.

19 Q. You were in charge of the highway patrol program?

20 A. That's correct.

21 Q. In your capacity and responsibility for that, can  
22 you tell us what, if any, violations of the  
23 workplace violence prevention program you  
24 handled?

1 A. I don't believe I handled any workplace violence  
2 complaints regarding the highway patrol. I don't  
3 believe I did.

4 Q. Now, you said that you spoke to Mr. Hendry about  
5 the workplace violence program. Did he conduct  
6 any training of you in regards to that program,  
7 that policy?

8 A. I don't believe there was any actual training.  
9 There may have been. Sometimes they would send  
10 an e-mail and you would read the e-mail, but I'm  
11 sure in the jail they had some type of structured  
12 training. I don't believe I ever went to any  
13 structured training on workplace violence.

14 Q. All right. Can you do me a favor and turn to  
15 Page 5?

16 A. (Witness complied.)

17 Q. Now, can you tell us -- now, we're looking at the  
18 section marked "supervisor". Do you see that?

19 A. Right.

20 Q. Can you read that first bullet point?

21 A. "Be familiar with Rensselaer County workplace  
22 violence policy and program."

23 Q. So I just want to be sure on this. Can you tell  
24 us what further efforts Mr. Hendry made to bring

1           you up to speed on the workplace violence policy  
2           program?

3           A.    You would have to ask Mr. Hendry.  I'm not sure.  
4                Some of this here -- like if you don't mind --  
5                some of this here -- I mean, this deals with, "Do  
6                not carry any weapons to work."  We carry weapons  
7                all the time to work.  That's our job.  In the  
8                corrections side, they don't carry weapons.  On  
9                the highway patrol side, everybody carries  
10              weapons all the time.

11          Q.    In the sheriff's department, in your capacity as  
12                undersheriff, about how many people are you  
13                responsible for?

14          A.    As the undersheriff, you're responsible for  
15                basically the same thing the sheriff would be  
16                responsible for.  You're responsible for the  
17                corrections, highway patrol, and the civil.

18                Am I supervising directly those people  
19                everyday?  Absolutely not.

20                Do I meet with my commander, especially on  
21                the highway patrol side?  Pretty much on a daily  
22                basis I do.

23                Do I try to meet with the -- and now in the  
24                position that I'm in, do I try to meet with the

1 chief of corrections? Maybe two times a week, at  
2 least, I do.

3 Q. So would you say that you're a supervisor?

4 A. I would say I'm an administrator more than a  
5 supervisor.

6 Q. If we turn back to Page 5. I'm not quite done  
7 with that.

8 Now, you read the first bullet point under  
9 "supervisor"?

10 A. Right.

11 MR. MARTIN: Just to be clear, is this  
12 Page 5 as written on the exhibit or --

13 MR. SORSBY: It would be technically  
14 Page 6, because of the cover letter, but it  
15 indicates on the exhibit Page 5.

16 MR. MARTIN: Okay.

17 Q. And just -- you see where it says, "Be familiar  
18 with Rensselaer County violence policy and  
19 program"?

20 A. Right.

21 Q. You understood that that was directed at you, as  
22 well?

23 A. Yes.

24 Q. All right. And you've never read the policy

1           regarding the workplace violence policy program?  
2           Is it fair to say that you weren't familiar  
3           with the Rensselaer County workplace violence  
4           program?

5           A.   Well, I don't know.  Maybe -- I mean, I don't  
6           know if I testified -- I said I don't recall  
7           reading it.  I never said I didn't read it.  I  
8           may have read it at some time.  I'm not sure.

9           Q.   Do you have a recollection of reading a workplace  
10          violence prevention program for Rensselaer  
11          County?

12          A.   I'm sure I did, but I can't state positively that  
13          I did.

14          Q.   Okay.  We may come back to that.  We're done with  
15          that for now.  You can put it there in case we do  
16          come back to it.

17                Now, you indicated that you had known  
18          Anthony Patricelli for some time.  Were you a  
19          part of his interview process?

20          A.   To be hired as a correctional officer, no.

21          Q.   You testified -- all right.  Okay.  Now, has  
22          there ever come a time where you were involved in  
23          a disciplinary matter, other than Mr. Gorman,  
24          involving Anthony Patricelli?

1 A. Not that I can recall. I may have, if it was  
2 minor discipline, but I don't recall.

3 MR. SORSBY: Let's get this marked.

4 (Exhibit 43 marked for identification.)

5 Q. I'm going to show you what's been marked as  
6 Exhibit 43.

7 A. Okay. Read it?

8 Q. Do you need more time to read it?

9 A. Yes. Let me read it through. Okay.

10 Q. Do you recognize what's been marked as  
11 Exhibit 43?

12 A. I'm sorry. Do I recognize --

13 Q. This document.

14 A. It's a letter written by Chief Bly to myself.

15 Q. What's the date on the letter?

16 A. January 6, 2015.

17 Q. Did you receive this letter from Chief Bly?

18 A. Yes.

19 Q. Having read that document, do you remember the  
20 substance of what was going on in the letter?

21 A. Basically, Lieutenant Rankin had told Patricelli  
22 to assume the duties of watch commander, and  
23 Patricelli had a problem with that for various  
24 reasons that he stated. And the chief of

1           corrections had a meeting and set him straight, I  
2           guess.

3           Q.   Now, in the chain of command, Sergeant Rankin,  
4           where is he placed vis-a-vis Anthony Patricelli?

5           A.   In the chain of command, there would be the chief  
6           of corrections, Captain Hetman below him, and  
7           Lieutenant Rankin would be one of the lieutenants  
8           below the captain and above the sergeants. I  
9           don't know if he would be his direct supervisor,  
10          but he would be the supervisor above the  
11          sergeant.

12          Q.   Was it within his power and authority to ask  
13          Anthony Patricelli to take the watch command?

14          A.   Yes.

15          Q.   Now, there's a policy, Rensselaer County  
16          sheriff's department policy, correct?

17          A.   There's a lot of policies.

18          Q.   An administrative manual, is that true?

19          A.   An administrative manual, yes.

20          Q.   Now, sergeant -- based on this letter you read,  
21          Sergeant Rankin gave a direct order to  
22          Anthony Patricelli?

23          A.   Lieutenant, just because he's over sergeant.

24          Q.   Lieutenant Rankin gave a direct order to



1 Sergeant Patricelli?

2 A. That's correct.

3 Q. Was he still a master sergeant at that time?

4 A. No. He did not have a master sergeant, which was  
5 only an honorary title.

6 Q. Now -- so what -- would it be misconduct for a  
7 subordinate to disobey a direct order from a  
8 superior?

9 A. It wouldn't be appropriate for that to happen.

10 Q. I want to know, would it be misconduct?

11 A. Well, I mean, if you're getting at -- to where  
12 can somebody be terminated for violating a direct  
13 order? I mean, if it was an emergency situation  
14 where something had happened, that's a  
15 possibility.

16 A lot of times there are disagreements, and  
17 that's why we have procedures for counseling and  
18 meetings to straighten these things out. There  
19 could be a miscommunication in the order, so  
20 that's why we have these meetings.

21 I mean, technically, at the far end of the  
22 spectrum, could you terminate someone for  
23 violating -- for not following a direct order?  
24 Yeah. Good luck in doing that, but I think

1           that's why we have procedures in place to meet  
2           with people, talk them over. There's options for  
3           counseling, options for time off. Depending on  
4           the severity and the interest of both parties  
5           that are involved in there, most situations can  
6           be resolved.

7           Q.   Now, violating or disobeying a direct order, is  
8           that a violation of the administrative rules at  
9           the sheriff's department?

10          A.   I would say yes.

11          Q.   Is it a serious event?

12          A.   Again, you would have to weigh all the  
13          circumstances.

14          Q.   Okay. The date on this is January 16, 2015, so  
15          is Sergeant Patricelli still employed at the  
16          sheriff's department?

17          A.   He's still employed. I think he's out with a  
18          knee injury.

19          Q.   Can you tell us if he was disciplined for this  
20          violation of the administrative rules?

21          A.   I believe he was given a counseling letter.  
22          That's apparently what the chief of corrections  
23          decided to do with that situation was give him  
24          that letter, and apparently it was fine with

1 Rankin.

2 Q. Do you believe that some other action should have  
3 been taken for violating this order, or do you  
4 think this is appropriate?

5 A. Well, I have to put my confidence in my chief of  
6 corrections and my lieutenant, who were both  
7 directly involved in that. And I hope -- I would  
8 hope they would make the best decision based on  
9 their knowledge and experience. So I would say  
10 those two people are highly capable people and  
11 they probably came to the right conclusion.

12 MR. SORSBY: I'd like to have another  
13 exhibit marked.

14 (Exhibit 44 marked for identification.)

15 Q. All right. I'm going to hand you what's been  
16 marked Exhibit 44. Let me know, did you have a  
17 chance to look at that?

18 A. I mean, I basically know what it is.

19 Q. Do you recognize what's been marked as  
20 Exhibit 44?

21 A. Yes. It's a copy of Rensselaer County Sheriff's  
22 Administrative Manual for Corrections.

23 Q. So you recognize this document?

24 A. Yes, I do.

1 Q. You understand this -- what do you understand  
2 this document to be?

3 A. This was an administrative manual that was put  
4 together shortly after we came in. This says  
5 2006, so within a year or two after we came in.  
6 We updated the administrative manual that was  
7 there prior to us.

8 Q. Did you have a role in updating this?

9 A. I might have looked at some policies. We had  
10 meetings from time to time. We may have looked  
11 at some policies. I didn't draft this, but we  
12 may have had some input into some policies that  
13 were in there.

14 Q. So you're familiar with this document and the  
15 things in it, correct -- the rules in it,  
16 correct?

17 A. Yes.

18 Q. Have you had a chance to review this document, in  
19 addition to having had some input into the  
20 updates?

21 A. When this document came out, I'm sure I went  
22 right through the document. And I have it on  
23 file, if I have to refer to it. Since then, I  
24 believe we made additional changes. And when a

1 new chief came in, I know they were working on  
2 upgrading policies and procedures.

3 Q. Do me a favor. Could you turn to Page 11? I'm  
4 referring to Page 11 on the bottom of the  
5 document.

6 A. Okay. County work rules?

7 Q. Correct. Now, do you see Number 3 at the bottom?

8 A. Penalties?

9 Q. Yes. All right. Can you just read for me 3.1?

10 A. "In conjunction with the county work rules  
11 concerning disciplinary action as set out in the  
12 policy and procedures manual, the sheriff's  
13 office may take any of the following disciplinary  
14 actions against a member or employee who violates  
15 any of the sheriff's office rules and  
16 regulations; (A) verbal reprimand, (B) written  
17 reprimand, (C) impose a sanction, (D) suspension,  
18 (E) demotion, and (F) dismissal."

19 Q. Now, can you turn over to Page 12, the next page?

20 A. Page 12. Okay.

21 Q. Okay. Now, what -- do you see it appears to  
22 indicate various violations there?

23 A. These are the county work rules, yes.

24 Q. Those are county work rules. And it says to the

1 right, first offense, second offense. Explain  
2 what you understand this to mean?

3 A. I understand it to mean that's what you would  
4 give somebody on their first offense, give them  
5 an oral warning.

6 Q. Okay. All right. Okay. Can you turn to the  
7 next page? It would be 13 at the bottom. I  
8 think it's actually --

9 A. This one here?

10 Q. Yes. Do you see Number 26?

11 A. Yes. Okay.

12 Q. Can you read that to us?

13 A. "Refusal to follow job instructions,  
14 insubordination."

15 Q. Is that an administrative rule?

16 A. Yes.

17 Q. And what does it say for the first offense?

18 A. "Suspension, review for discharge."

19 Q. Now, can you tell us why this particular  
20 incidence that we're talking about where  
21 Sergeant Patricelli refused a direct order from  
22 Lieutenant Rankin, he was not suspended or  
23 reviewed for discharge?

24 A. Because I think that's some decision that was

1 made between Rankin, Chief Bly, and Patricelli.

2 I think they came up with that solution, rather  
3 than Rankin suspending him on the spot.

4 If I may expand on that a little bit, if I  
5 gave you a direct order, Stop that guy before he  
6 puts that noose around his neck, and you don't do  
7 it, that's a pretty serious violation. I  
8 probably would suspend you right on the spot for  
9 that. But if I said to you, Hey, get back to  
10 work. I don't want you drinking that coffee, and  
11 you wound up taking two more sips before you  
12 threw the coffee away, it probably isn't grounds  
13 for suspension.

14 So that's why in situations like this, we  
15 put our heads together for solutions that both  
16 satisfy the problem, satisfy the union  
17 obligations that we have to work with the union,  
18 and in the best of the sheriff's department in  
19 general.

20 Q. So you're saying that when somebody refuses an  
21 instruction or is insubordinate, it depends on  
22 the situation? You have discretion as to what --

23 A. I think the person giving the order is the one  
24 with discretion. I think if Rankin thought --

1 Rankin is familiar with the -- he's familiar with  
2 the administrative manual. He's familiar with  
3 the county work rules. If he gave somebody an  
4 order and they did not follow the order, and he  
5 felt it warranted suspension, he probably would  
6 have done that. But he didn't, so I'm sure he  
7 thought that didn't rise to that occasion.

8 Q. Keep on Page 13. And what I'm trying to  
9 understand is why, on 26, it says, "First  
10 offense, review"; do you see it?

11 A. Right.

12 Q. All right. Now, you read that, and it says,  
13 "Suspension, review for discharge." Why doesn't  
14 it say "depending on the situation"?

15 A. Because I think all of these can be worked out  
16 through negotiations before you get to this step.

17 Q. All right. So you don't -- all of these. I  
18 mean, do you see that Number --

19 A. Theft of county property, okay? Number 28,  
20 Suspension and review for discharge. If you  
21 stole three pencils from the office, am I going  
22 to suspend or discharge you?

23 Q. I don't know.

24 A. If you -- if you wound up taking a notepad home



1 from my office, am I going to suspend you and  
2 discharge you?

3 Q. I'm asking, would you in that scenario?

4 A. You would probably get what they gave Patricelli,  
5 a counseling notice. I don't want to be  
6 argumentative --

7 Q. It says --

8 A. -- but people have to use their heads in  
9 situations.

10 Q. What about falsification on county forms and  
11 records; would it depend on the situation?

12 A. Again, it would depend on the situation. I think  
13 if you were falsifying a record where you were  
14 embezzling, this and that, it would be a lot more  
15 -- I can't even think of a situation. But I'm  
16 saying, again, you would have to look into the  
17 situation. That's why we do investigations.

18 Q. And just to clarify, what about overtime  
19 violations?

20 A. What do you mean?

21 Q. Misreporting overtime, would that depend? Is  
22 that a terminable offense in this scenario?

23 A. Here's the thing with overtime. If you  
24 investigate that and there's a situation where

1           that happens, and you prove that, that's almost  
2           like a criminal charge, a larceny charge. So  
3           you're going down a different avenue there.

4       Q.   And just for clarification, because I want to be  
5           clear. If somebody were to take pencils home or  
6           a notepad home, that's something to discuss, not  
7           necessarily a terminable offense?

8       A.   Right.

9       Q.   Now, I just want to be clear on this. I'm  
10          looking at the county rules. They're saying  
11          first offense, discharge, suspension, review for  
12          discharge. These are not hard, fast rules at the  
13          sheriff's department. These rules are --

14      A.   Well, our argument has always been that a lot of  
15          those county work rules don't -- not that they --  
16          they are county work rules, legitimate county  
17          work rules, but they don't necessarily fit into  
18          the parameters of the sheriff's office, because  
19          we operate different than a lot of other agencies  
20          within the county. We work a 24/7 operation.  
21          You have to depend on certain things.

22                So our argument is always we'd like to  
23          negotiate a separate set of county work rules for  
24          the sheriff's office, because some of them just

1 don't apply to certain things, but that's what  
2 we've got to work with.

3 Q. Well, just to be clear --

4 A. I mean, let me -- let me explain. Are you asking  
5 me, could you, if somebody stole two pencils or a  
6 notebook from the office, could you suspend them  
7 and discharge them?

8 Q. I'm just asking --

9 A. Yes, you could. How far do you think you would  
10 get with it? Not too far.

11 Q. Well, that's what I'm -- there's what's written  
12 and there's what's practiced in application. Is  
13 this what's actually applied in the sheriff's  
14 department? You already testified that not in  
15 all cases, so you don't have to go on. I think  
16 you've established that. All right.

17 MR. SORSBY: Let's mark another exhibit.

18 (Exhibit 45 marked for identification.)

19 Q. Going back in time, if you will. I'm going to  
20 show you what's been marked as Exhibit 45. Let  
21 me know when you've had a chance to review it?

22 A. I have.

23 Q. Do you recognize this document?

24 A. Yes.

1 Q. How do you recognize this document?

2 A. I recognize it. It was a document that I sent to  
3 Patricelli, advising him that the office is  
4 conducting an internal affairs investigation, and  
5 it was regarding improper use of the E-justice  
6 system. I did not conduct the investigation. I  
7 did, however, sign this and issue this to him.  
8 And I think this is probably based on the  
9 recommendation of the sheriff or county.

10 Q. What was the recommendation?

11 A. To send him the notice.

12 Q. But you sent him the notice, correct?

13 A. I did. I signed the notice.

14 Q. What did you understand the allegation regarding  
15 the E-justice system to be?

16 A. This, I believe, was a situation where he was  
17 alleged to have accessed the E-justice system to  
18 check the record of a person that he shouldn't  
19 have been checking.

20 Q. Why shouldn't he have been checking it?

21 A. To run a criminal history check, you have to have  
22 an open case on it. And people who come in to  
23 the jail, they run a criminal history check.

24 To the best of my recollection, this person

1           was not in the jail, he was not an inmate, and  
2           there wasn't an open criminal case on it.

3       Q.   Do you know who the individual was?

4       A.   I don't positively, but I believe and I was told  
5           it was some person that Mr. Gorman's sister maybe  
6           was dating.

7       Q.   All right. And how did you first become aware of  
8           this incident?

9       A.   I can't remember if it came from the sheriff that  
10          he was telling me or -- I'm not sure. I knew of  
11          the incident. I did not investigate the  
12          incident, but I knew of it.

13      Q.   Were you part of the investigation?

14      A.   I might have been apprised at different stages of  
15          it.

16      Q.   And that would have been by who?

17      A.   The sheriff probably told me, and I believe --  
18          I'm not sure, but it might have been one of our  
19          highway patrol investigators was investigating  
20          it, Bill Webster.

21      Q.   Now, what is the E-justice system?

22      A.   It's a portal you can use to check somebody's  
23          background.

24      Q.   Criminal background?

1 A. Criminal background.

2 Q. So for a person -- an unauthorized person or a  
3 person using it in an unauthorized way, do you  
4 understand that to be a crime?

5 A. It is definitely a violation of our policy, and  
6 it could be a crime.

7 Q. I mean, do you understand that -- you said it  
8 could be a crime. Do you understand that it --  
9 what type of crime it might be?

10 A. I'm not positive.

11 Q. Do you understand it could have been a violation  
12 of the rules and regulations regarding the  
13 Department of Corrections and Justice --  
14 Department of Corrections and Criminal Justice,  
15 DCJS.

16 A. Yeah. It's definitely a violation of their rules  
17 and regulations of when you can -- and I believe  
18 that -- now that we're talking about it, I  
19 believe that's how it was originally determined,  
20 because we have to do audits on them, or they  
21 come in and do audits on it. Our numbers have to  
22 match with our cases, and I think we may have  
23 gotten a heads-up when they came in to do the  
24 audits.

1 Q. You don't recall one of the other corrections  
2 officers making a report regarding an alleged  
3 misuse of the system?

4 A. I think the other person is a correctional  
5 officer named Wendy Vega. And if I can remember  
6 the case, she stated that Patricelli went to her  
7 to ask her to run this person. She ran the  
8 person.

9 Now, her being in charge of that system, she  
10 should know the rules and regulations of what to  
11 operate. If Patricelli went to her and said,  
12 "I'm doing an investigation" -- At that time, the  
13 sheriff had Patricelli working with Troy P.D. on  
14 different cases out on the street. Vega said,  
15 "From time to time, he will come to me with a  
16 name to run." Legitimate, as long as they have a  
17 case number.

18 I don't know. Apparently it wasn't the case  
19 in this situation, but those are the two people  
20 that would have access to that.

21 Q. Did you also mention a Mr. Webster, as well,  
22 involved in this?

23 A. Webster is one of our investigators from the  
24 highway patrol. And I believe he investigated

1 the case. Bill Webster is our contact person  
2 with DCJS as far as warrant checks and overseeing  
3 those portals or stations.

4 Q. Did you also understand that Mr. Gorman himself  
5 went to Mr. Webster and made a report regarding  
6 the misuse of the E-justice system?

7 A. That I don't recall. Which Gorman? There were  
8 two.

9 Q. Mr. John Gorman.

10 A. His brother is a deputy sheriff.

11 Q. Do you recall that?

12 A. No, but I mean, when you said Mr. Gorman, I  
13 believe at the time his brother was a deputy  
14 sheriff.

15 Q. And -- all right. So you don't recall -- did  
16 Mr. Webster tell you how he began the  
17 investigation, how it came to his attention?

18 A. I don't remember, but I think it was some audit  
19 that may have discovered it.

20 Q. That's what you understand?

21 A. Yeah. I'm not positive, though.

22 Q. Now, Mr. Webster was part of the highway patrol?

23 A. That's correct.

24 Q. All right. And so he had a lot of contact with



1           you. You testified earlier you were in charge of  
2           the highway patrol?

3           A. That's right.

4           Q. How many times did he talk to you about this  
5           investigation?

6           A. He was doing this investigation and reporting to  
7           the sheriff.

8                       MR. SORSBY: Bear with me one second here.  
9           Can you mark these two exhibits?

10                      (Exhibits 46 and 47 marked for  
11           identification.)

12          Q. Have you had a chance to review that?

13          A. No.

14          Q. Go ahead.

15          A. Okay.

16          Q. Now, do you recognize that document, having had a  
17          chance to read it?

18          A. Yes.

19          Q. What do you recognize that document to be?

20          A. I recognize it came from New York State  
21          Department of Criminal Justice Services, and it  
22          was a notification to Sheriff Mahar that they  
23          think there might have been an impropriety in the  
24          records check. And they're asking for

1 William Webster to assist us.

2 Q. Have you seen this document before?

3 A. The sheriff may have showed it to me, but I don't  
4 recall.

5 Q. Is it addressed to you?

6 A. No.

7 Q. Is there a cc on the bottom that you can see?

8 A. I don't think so.

9 Q. I show you what's been marked Exhibit 46.

10 A. Thank you.

11 Q. Do you recognize this document?

12 A. Again, it's a letter from the New York State  
13 Department of Criminal Justice Services to  
14 Sheriff Jack Mahar, and it looks like it's a  
15 conclusion of their investigation.

16 Q. And what did they conclude? Do you see it?

17 A. It says, "Given the above, we conclude that the  
18 inquiry into the CHRI of Peter Colantonio was a  
19 violation of the terms of use of the  
20 dissemination agreement between the sheriff's  
21 office and DCJS." It says, "An inquiry is not  
22 only a violation of the U&D, but also violates  
23 FBI and NCIC guidelines covering access to use of  
24 CHRI."

1 Q. And had you -- before today, have you seen this  
2 document?

3 A. I can't say one way or another. I mean, he may  
4 have shown me, but I'm not sure. I wasn't cc'd  
5 on it.

6 Q. Were you made aware of the ultimate results of  
7 their investigation, even if you hadn't seen this  
8 before?

9 A. I was made aware that there was a violation of  
10 the use of that term.

11 Q. Who made you aware of that?

12 A. The sheriff.

13 Q. Now, it says here -- I'm looking at Exhibit 46.  
14 It says, "It would be helpful if you could  
15 arrange for an E-justice New York terminal agency  
16 coordinator William Webster." What is an  
17 E-justice terminal agency coordinator?

18 A. He is our liaison between DCJS and the sheriff's  
19 office. He actually checks the logs and makes  
20 sure the case numbers are logged in for the  
21 different reports. So that's one of his duties.  
22 He is the coordinator of that.

23 Q. Anthony Patricelli was a corrections -- worked  
24 in the corrections department; is that right?

1 A. That is correct.

2 Q. Why would he use the E-justice system?

3 A. They have it in corrections. So when people come  
4 in, they're allowed to use that facility.

5 Q. I'm wondering why Mr. Webster would be made the  
6 coordinator if it's over on the corrections side?

7 A. I think he's just the coordinator of the project  
8 in general.

9 MR. SORSBY: All right. Bear with me one  
10 second. I'll have this marked as an exhibit.

11 (Exhibit 48 marked for identification.)

12 Q. Now, before DCJS got involved, there was an  
13 investigation launched by Mr. Webster himself,  
14 correct?

15 A. I don't know if that was before DCJS got involved  
16 or simultaneously. I know that according to one  
17 of those I just read, it looks like DCJS was  
18 informed by somebody that there was a violation,  
19 and they were asking for Webster to contact them.  
20 So I don't know if it was before, simultaneously,  
21 or after.

22 Q. Okay. All right. I'm just going to show you  
23 more documents to refresh your recollection.

24 MR. SORSBY: Off the record.

1 (Whereupon, a lunch recess was taken from  
2 12:08 p.m. through 12:51 p.m.)

3 MR. SORSBY: Back on the record.

4 Q. And last we were discussing -- Undersheriff  
5 Russo, we were discussing the E-justice system.  
6 Do you recall that?

7 A. Yes.

8 Q. And Mr. -- Sergeant Patricelli -- Master  
9 Sergeant Patricelli's, at the time, use of that  
10 system?

11 A. Mm-hmm.

12 MR. SORSBY: Now, I just want to clarify  
13 something. We started with the documents from  
14 DCJS and their investigation, but we probably  
15 should have started with the documents we have  
16 regarding the internal investigation at the  
17 sheriff's department. So I'm going to introduce  
18 that now, and have that marked.

19 (Exhibit 49 marked for identification.)

20 Q. Let me show you what's been marked as Exhibit 49.  
21 Now, there's a lot of documents. Do you  
22 generally recognize the documents you're looking  
23 at?

24 A. I do. One is an incident report, SIR-3205, and

1 the rest look like followup.

2 Q. You're talking about the first page?

3 A. First page.

4 Q. That's an incident report filed within the  
5 sheriff's department?

6 A. That's correct.

7 Q. Does it indicate who filed it?

8 A. It looks like William Webster was the reporting  
9 officer, and it was filed on the request of  
10 Sheriff Mahar.

11 Q. And is there a date on that?

12 A. It looks like the report date is 3/22/13.

13 Q. Based on your reading of that, do you understand  
14 that the DCJS investigation came after the  
15 launching of the internal investigation?

16 A. If the dates are --

17 Q. Exhibit 46 I just handed you, and 47.

18 A. Yes. So the internal came first and they came  
19 after.

20 Q. So you're saying the internal investigation came  
21 before the DCJS?

22 A. The internal investigation is dated before the  
23 DCJS report.

24 Q. And I apologize. I didn't get to make a copy of

1           that beforehand. I just wanted to show you.

2           This is the one -- this would be one, two,  
3           three, four, the fifth page of this exhibit.

4           Do you see something to the effect that  
5           there was a sworn statement taken by  
6           Mr. Patricelli?

7       A. I just -- "A reporting investigator interviewed  
8       Master Sergeant Anthony Patricelli in reference  
9       to this investigation. A sworn voluntary  
10      statement was obtained." And it just says, "See  
11      attached. Investigation to continue."

12     Q. Sir, do you know where that sworn statement is?

13     A. I do not.

14     Q. Is it the custom and practice of the sheriff's  
15      department to keep those statements?

16     A. Yes.

17     Q. I mean, it's a sworn statement?

18     A. Yes.

19     Q. So that statement should have been kept, correct?

20     A. It should be somewhere with the file, yes.

21     Q. I'll take that back. All right. I'm going to  
22      show you what is the last page of this exhibit.  
23      Sorry. Start with the date at the top there for  
24      us?

1 A. The date?

2 Q. Yes. Correct.

3 A. 3/22/13.

4 Q. Let me take that back and make sure we're reading  
5 the right date.

6 A. Right here.

7 Q. That's the incident date/time. I'm talking about  
8 in the narrative, do you see there's a date  
9 there?

10 A. Okay.

11 Q. What's that date?

12 A. 6/13/13.

13 Q. Now, who is that from, can you tell?

14 A. It looks like the reporting officer is  
15 William Webster.

16 Q. What is this type of document? We've looked at a  
17 couple of them.

18 A. Document, supplemental.

19 Q. It's part of the report?

20 A. Part of the investigation.

21 Q. Are they normally affixed to the incident report?

22 A. They're normally with the incident report. I  
23 don't know if they're affixed to it.

24 Q. So -- all right. Can you read what it says in



1 the narrative, please?

2 A. "No other investigative leads for this  
3 investigation. Copies of all case paperwork  
4 provided to the sheriff's assistant for further  
5 action in regards to subpoena. No further  
6 actions. Closed by investigation."

7 Q. Can you tell us what subpoena he's referencing?

8 A. That I do not know, because I had no part in this  
9 investigation.

10 Q. So having just read that, what was the result of  
11 the investigation, the internal investigation?

12 A. It says closed by the investigation. I don't  
13 know what the result of that investigation were.

14 Q. All right. Was any further action taken after  
15 this date, do you know?

16 A. I wasn't part of the investigation, so I don't  
17 know.

18 Q. Well --

19 A. I don't know. I mean, according to this, it says  
20 "closed by investigation". Now, I don't know if  
21 something else was generated that I don't have in  
22 front of me.

23 Q. Do you understand what the results of the  
24 sheriff's investigation was?

1 A. I do not have it.

2 Q. And so now the DCJS did its own investigation,  
3 correct?

4 A. That's correct.

5 Q. And they found Anthony Patricelli violated the  
6 rules and regulations regarding the E-justice  
7 system?

8 A. Correct.

9 Q. I'll take that back from you. I want to show you  
10 what's been marked Exhibit 48. Can you read the  
11 top of that for us?

12 A. "Webster notes."

13 Q. And can you read what it says right below that?

14 A. "DCJS recommendations, termination." It says  
15 "normally" -- I think "normally".

16 Q. Now, DCJS found that he violated the rules and  
17 regulations regarding the E-justice system, and  
18 you read earlier from Exhibit 47 that that's a  
19 violation of a number of regulations, but  
20 specifically FBI regulations and Department of  
21 Corrections or DCJS regulations. As a result of  
22 that, was Mr. Patricelli terminated?

23 A. No.

24 Q. Do you have -- now, we've looked at -- again, we

1 marked exhibits here, letters from DCJS. Do you  
2 know where the letter from DCJS is with their  
3 recommendation?

4 A. Let me see one of those.

5 Q. These are the two.

6 A. Okay. This is saying it can result in the  
7 termination of the sheriff's office access to it,  
8 not to terminate Mr. Patricelli.

9 Q. I'll take that.

10 A. To answer your original question, I don't know.

11 Q. And was -- now, did -- hold on a second. Can  
12 you tell us -- it says in Webster's notes,  
13 Exhibit 48, "DCJS recommendation, termination  
14 normally." Do you know if there was a  
15 recommendation by DCJS for termination of  
16 Anthony Patricelli?

17 A. That I do not know.

18 Q. Can you tell us if Webster -- Sergeant Webster,  
19 is that correct?

20 A. No, Investigator.

21 Q. Investigator Webster, if he made a recommendation  
22 for Anthony Patricelli's termination?

23 A. That I don't know.

24 Q. Did you talk to Investigator Webster about the

1 investigation?

2 A. Briefly, but like I said, I wasn't involved. He  
3 was reporting to the sheriff at the time.

4 Q. Do you know if the results of  
5 Investigator Webster's investigation were  
6 provided to DCJS?

7 A. I do not know.

8 Q. All right. Now, are you involved in the  
9 termination process of employees? You said  
10 you're responsible for everybody the sheriff is  
11 responsible for, and you also testified that  
12 sometimes you're involved in the disciplinary  
13 process, correct?

14 A. Correct.

15 Q. Have you ever recommended termination for an  
16 employee?

17 A. I don't believe I've recommended termination.  
18 I've signed letters of termination based on the  
19 sheriff and counsel's advice.

20 Q. Are you aware of the fact that  
21 Mr. Anthony Patricelli was prosecuted criminally  
22 for this violation?

23 A. Yeah. I'm not sure I remember what the outcome  
24 was. I think he pled to something, some charge.

1 Q. You have a belief or understanding that he pled  
2 to a charge in the matter?

3 A. I believe the case was adjudicated.

4 Q. Can you tell us why, today, Anthony Patricelli  
5 wouldn't have been terminated for this offense,  
6 for the abuse of the E-justice system?

7 A. I don't think that's the way the county wanted to  
8 pursue.

9 Q. Is the misuse of the E-justice system a violation  
10 of one of the county rules?

11 A. I would say yes. I'd have to look to see which  
12 one it fits, but I'm sure.

13 Q. Is it a violation of one that prohibits  
14 committing crimes?

15 A. It could be.

16 Q. Do you understand the abuse of the E-justice  
17 system to be a crime?

18 A. Yes.

19 Q. And so do you believe that Anthony Patricelli  
20 misused the E-justice system?

21 A. I believe that the investigation found that to be  
22 true.

23 Q. And then based on that belief, do you think he  
24 should have been terminated for committing a

1 crime?

2 A. That was not my decision to make.

3 Q. Whose decision was it to make?

4 A. It was up to the sheriff and the county. In a  
5 lot of these cases, union rights come into play.  
6 So you're fighting another battle on that front,  
7 too.

8 Q. Was it the recommendation of the sheriff that  
9 Anthony Patricelli be terminated?

10 A. That I don't know.

11 Q. We already marked this as an exhibit. I'm going  
12 to have you read it so we can have clarification.

13 It's the county rules. Go to Page 15 real  
14 quick, Number 30. Do you see that? I don't know  
15 if we had you read this earlier, but go ahead and  
16 read the first part?

17 A. Number 30?

18 Q. Number 30, yes.

19 A. "Conviction of a crime or engaging in unlawful or  
20 improper conduct which -- " Do you want me to  
21 continue?

22 Q. Yes.

23 A. " -- which affects the employee's ability to  
24 perform the job or report to work, resulting in

1 reluctance or refusal of other employees to work  
2 with him or her, harms the county's reputation or  
3 public trust."

4 Q. Now, the E-justice system contains personal  
5 criminal records of members of the public?

6 A. That's correct.

7 Q. Would the violation of the E-justice system harm  
8 the public trust?

9 MR. MARTIN: Object to the form.

10 MR. SORSBY: You can still answer.

11 A. It could.

12 Q. Now, you said you weren't involved -- it would  
13 be the county and the sheriff that would  
14 recommend termination. You're going to be  
15 sheriff soon, presumably. Would you have  
16 recommended termination?

17 MR. MARTIN: Object to the form.

18 A. I'll make that decision when I'm sheriff. I  
19 don't deal in hypotheticals.

20 Q. Again -- but I'm asking you -- I'll ask you in  
21 your role as an undersheriff, because you're  
22 responsible for all the employees, in addition to  
23 the sheriff. So do you believe termination  
24 should have been recommended in this matter?

1 MR. MARTIN: Object to the form.

2 MR. SORSBY: You can answer.

3 A. I believe that could be an option. I believe the  
4 county, like any other agency, would look at all  
5 our options and - you know - choose the best one  
6 that fits the case.

7 I'd like to revert back, if I could, to Item  
8 Number 30, conviction of a crime or engaging in  
9 unlawful or improper conduct that affects the  
10 employee's ability to perform the job or report  
11 to work. Now, if I had an employee who happened  
12 to go out drinking and drank in excess, and it  
13 was improper conduct in my opinion, and you  
14 should be aware that you're out in public and you  
15 shouldn't get intoxicated. But let's say that he  
16 did, and he had to call in sick that day, and  
17 that affected his ability to come to work. Would  
18 I suspend or discharge him? Probably not.

19 So these are very, very broad, broad  
20 examples of how they should be applied, but it's  
21 not concrete that they should be applied in every  
22 case or we wouldn't have anybody working  
23 probably.

24 Q. Let me ask you. That says the commission of a



1 crime or conviction of crime, does it not?

2 A. It does, but what I'm saying right above that,  
3 where it says conviction of a crime or engaging  
4 in unlawful or improper. So that -- reading that  
5 is if you engage in improper conduct.

6 Q. But we're not talking about that. We're talking  
7 about the conviction of a crime.

8 A. Okay.

9 Q. I'm asking you, a conviction that violated the  
10 E-justice system?

11 A. I would say it would be an option I would  
12 consider. I'd have to deal with the facts of the  
13 case.

14 Q. And do you believe in every case when a person is  
15 convicted of a crime, an employee the sheriff's  
16 department, they should be terminated?

17 A. No. I think -- you're talking crimes being  
18 misdemeanors and --

19 Q. Correct.

20 A. Again, I'd take it on a case-by-case basis. I  
21 think there's some crimes that absolutely don't  
22 belong there, and other ones you may be given a  
23 second chance.

24 Q. So --

1 A. I mean, you can hire somebody that's been  
2 convicted of a misdemeanor, actually hire them.

3 Q. Okay. I understand. Do you understand that the  
4 public officer's law prohibits the continued  
5 employment of somebody who commits a crime?

6 A. Certain crimes, I believe. I'm not that familiar  
7 with it. I think certain crimes allow continued  
8 employment. Maybe I'm wrong.

9 Q. And do you believe that the public officer's law  
10 prohibits the continued employment of somebody  
11 that commits a crime in the line of duty?

12 A. Again, I'd have to research that again and take  
13 each case on an individual basis.

14 Q. All right.

15 MR. SORSBY: Can you mark this?

16 (Exhibit 50 marked for identification.)

17 Q. I'm going to show you what's been marked as  
18 Exhibit 50.

19 A. Okay.

20 Q. Now, let me know when you've had a chance to go  
21 over it.

22 A. Yes. Okay.

23 Q. Now, are you aware that Sergeant Patricelli was  
24 on an impact team?

1 A. That was one of his -- one of his duties that he  
2 worked with the impact team.

3 Q. Did there come a time where there was an abuse of  
4 overtime with Anthony Patricelli?

5 A. That I do not know looking at the sheet. I think  
6 there were allegations that he may have put in  
7 for overtime that he did not work, but I did not  
8 have anything to do with that investigation. I'm  
9 looking at this sheet that I believe I'm looking  
10 at for the first time from Troy P.D..

11 Q. Let's see. Maybe there was something improperly  
12 affixed. Do you recognize what the second  
13 document is?

14 A. The second document looks like a form from Troy  
15 P.D., impact results, and they're showing a  
16 couple dates where there was impact activity.  
17 And it looks like some totals for arrests and  
18 drugs seized, but I don't -- I don't know if  
19 there's totals for the three days. Let me see.  
20 This is a Troy P.D. report of when the impact  
21 details went out.

22 Q. So if he's claiming overtime at that time, isn't  
23 that part of the issue?

24 A. Yeah, it would be, unless there was some other

1 explanation, which I don't know. On its face, it  
2 looks like -- it looks like on its face, there's  
3 additional dates here that Troy does not have on  
4 their impact results. I don't know if it was.

5 Q. Have you ever seen these documents before today?

6 A. I've never seen this before today. This is a  
7 standard form that we use for our overtime, so  
8 I've signed them, but I don't know if I've seen  
9 this one, but I've seen these forms before.

10 Q. You said you were aware of an allegation of  
11 misuse of overtime; is that correct?

12 A. This is probably what they were talking about.

13 Q. How did you become aware of that?

14 A. I think Sheriff Mahar made a complaint that he  
15 was misusing overtime. I don't know if it was  
16 ever investigated.

17 Q. Do you know if Anthony Patricelli was removed  
18 from the impact panel, impact team?

19 A. I'm not sure. I know the sheriff allowed him to  
20 work with other agencies, so I don't know what he  
21 was working on and what he wasn't.

22 Q. Can you tell us where, in the chain of command,  
23 Patricelli fit -- Anthony Patricelli fit during  
24 the time in question?

1 A. Well, Anthony Patricelli would have fit in  
2 between the lieutenants and the corrections  
3 officers. He was a sergeant.

4 Q. He was a master sergeant; isn't that true?

5 A. Master sergeant was in title only. He held the  
6 permanent rank of sergeant and got the sergeant's  
7 pay, so I would say he's a sergeant.

8 Q. And did that special title give him special  
9 privileges?

10 A. I don't know if the title gave him special  
11 privileges. I know he had the opportunity to go  
12 work with other agencies, but I think it was more  
13 the job he was in allowed that. I guess the job  
14 he was in probably was associated with the master  
15 sergeant rank, the job he worked.

16 Q. Okay. So again, just for clarification, who did  
17 he report directly to in the chain of command?

18 A. He would have reported to a lieutenant, who was  
19 the next rank above him.

20 Q. Do you recall who that was?

21 A. No, I don't.

22 Q. Do you recall that he reported to Sheriff Mahar  
23 for most things?

24 A. Well, he definitely had a connection with the

1           sheriff, but his reporting responsibility was to  
2           the lieutenant, which would have been the next  
3           higher rank above him. If you're asking me, did  
4           he go to the sheriff and see him on different  
5           things? Yes.

6           Q. How did you know that?

7           A. Because they were pretty close at that time.

8           Q. When you say "pretty close", can you tell us more  
9           about that? What do you mean by that?

10          A. They were friends, like I was when I worked in  
11          Troy. The sheriff was a friend of his. At the  
12          time we all had motorcycles, so occasionally we  
13          would ride together. He would talk to the  
14          sheriff, just like I have people come over and  
15          talk to me in my office. So I would see him  
16          there.

17          Q. You said at that time they were close. Did there  
18          come a time they weren't close anymore?

19          A. Probably down the road they distanced themselves,  
20          and I don't know if it was from one of these  
21          investigations or not.

22          Q. Did it happen during this period when Mr. Gorman  
23          was employed?

24          A. I don't recall when the actual -- I know the

1 relationship now isn't what it used to be.

2 Q. Did that breakdown occur before or after the  
3 instances that Mr. Gorman has alleged?

4 A. I think the breakdown was -- when Ruth Vibert was  
5 the chief, there may have been some friction  
6 there between him and her, and that spilled over  
7 to his relationship with the sheriff.

8 Q. Do you recall an incident where Judge McGrath had  
9 Anthony Patricelli's guns taken away, and he was  
10 suspended from work for thirty days as a result  
11 of that?

12 A. As a result of this arrest here?

13 Q. No. Do you recall an incident where his --  
14 Sergeant Patricelli's guns were taken away from  
15 him by a judicial order?

16 A. Yes, I do remember his guns being taken. I think  
17 it was the criminal case where they went and  
18 seized his guns.

19 Q. Which criminal case?

20 A. The E-justice case.

21 Q. You think it was a response to that?

22 A. I think it was.

23 Q. You don't recall if there was an incident where  
24 he fired a weapon at a moving car, and that's why

1 his guns were removed by judicial order?

2 A. I don't believe that. I do recall the incident,  
3 but he didn't fire into a moving vehicle. Like  
4 he fired into the tire of a vehicle that was  
5 attempting to move. And at that time, he was a  
6 member of the SWAT team, who are capable of  
7 making those shots.

8 And in that situation, that shot probably,  
9 although it did not disable the car, it prevented  
10 the car from leading the police on a 100 mile an  
11 hour high-speed chase as opposed to that car  
12 could only do 40 miles an hour with a flat tire.

13 So in my opinion, that shot never placed  
14 anybody in danger. It did partially neutralize  
15 the situation. And I don't -- as an  
16 administrator and seeing that situation unfold  
17 there, I did not have a problem with a trained  
18 member of the SWAT Team taking that shot. My  
19 personal opinion. And I don't think his guns  
20 would have been away for that reason.

21 MR. SORSBY: I'll have that marked.

22 (Exhibit 51 marked for identification.)

23 Q. I show you what's been marked Exhibit 51.

24 A. Okay.



1 Q. Do you recognize who -- Investigator Ungerman, do  
2 you know who that is?

3 A. No, I do not.

4 Q. Can you tell us what the date is?

5 A. October 26, 2004.

6 Q. Let me actually see that. It's a different date,  
7 I believe.

8 A. October 26, 2004. Okay. He's saying -- you  
9 want it back first?

10 Q. Yes, just to make sure we're talking about the  
11 same date. I'll give it right back to you.  
12 Correct. That's the correct date. You can take  
13 a look at that e-mail.

14 A. This is -- this is referring to an incident that  
15 happened in 1994. It says Patricelli was  
16 suspended without pay from March 18 to April 4,  
17 1994, was placed on probation until September 22,  
18 1994, and his pistol permit was suspended on  
19 March 14, 1994 and reinstated on December 14,  
20 1994, but I didn't go down to sheriff's office  
21 until 2004. So this happened like --

22 Q. The letter is dated 2004, correct?

23 A. 2004, yes. It's the first time I saw the letter,  
24 and it's -- it's from Marcelle Connor to

1 Investigator Charles Ungerman.

2 Q. Do you recognize who Connor is?

3 A. Well, she's Marcelle Swanberry now.

4 Q. This letter was written after you became  
5 undersheriff?

6 A. That's correct.

7 Q. You're telling me this is the first time you've  
8 seen this letter?

9 A. Yes. I don't know why she's writing to let him  
10 know he has a valid pistol's permit. All I know  
11 is what I have here in front of me.

12 MR. SORSBY: I'll have these marked as  
13 well, sequentially.

14 (Exhibit 52 and 53 marked for  
15 identification.)

16 Q. So now I'm trying to figure out the purpose of  
17 this letter, as well. It's dated October 26,  
18 2004.

19 Are you aware, when you first became  
20 employed as undersheriff, was there an ongoing  
21 investigation of Patricelli, as well?

22 A. The last name Ungerman sounds familiar, but I  
23 don't know who that is.

24 Q. You may -- I'm going to hand you these

1 documents, and you can tell me if you've seen it  
2 before. And it's related to the document I just  
3 showed you. I think it's dated 1994.

4 A. Yeah.

5 Q. Have you ever seen that?

6 A. No.

7 Q. I'm just asking if you've seen it before. It's  
8 an old document, right?

9 A. Yes.

10 Q. You do see he was suspended without pay at that  
11 time?

12 A. Yes.

13 Q. And you do see that -- I just handed you  
14 Exhibit 53. You do see that Judge McGrath  
15 ordered his guns be taken away at the time?

16 A. This one just says he was suspended without pay  
17 from 3/18/94 to 3/29/94.

18 Q. And you see the letter from Judge McGrath?

19 A. Yes.

20 Q. He had his guns taken away?

21 A. Right.

22 Q. Now, that was '94. That was before your time?

23 A. Yes.

24 Q. Okay. Now, you were discussing some other

1 incident where you said he shot somebody's tire.  
2 That wasn't in '94. That was a different  
3 incident?

4 A. No. No. No. That was when we were down there  
5 on the -- somebody -- I believe you said he shot  
6 at a moving vehicle, and I wanted to clarify  
7 that, that it wasn't a moving vehicle. It was a  
8 SWAT operation and at no time -- the shot was  
9 made by a trained SWAT guy into the tire of a  
10 stationary vehicle, and at no time was the public  
11 in danger by that shot.

12 I don't want you to think he's going down  
13 the street and shooting at the cars. And that --  
14 when you said that, you kind of gave me the  
15 impression that's what you thought.

16 Q. That incident is different than what we were  
17 talking about?

18 A. Yeah.

19 Q. That was when you were --

20 A. That's right. That's right.

21 Q. Was there -- did you investigate that?

22 A. We did, and I believe -- I don't have reports on  
23 it, but I myself, personally, I thought we should  
24 have got right in front of that. And I mean, the

1 more that the rumor was out there that the car  
2 was being shot at, and the public was in danger,  
3 and a high speed chase. We didn't need that.

4 Q. Was it government property, the vehicle?

5 A. No.

6 Q. Who did it belong to?

7 A. It belonged to the bad guy that was trying to get  
8 away.

9 Q. Was that person ultimately convicted as far as  
10 you know?

11 A. It was a joint operation with the feds. I  
12 believe he was, yes, but I don't know the exact  
13 outcome.

14 Q. All right. Do you know, in that investigation --  
15 who conducted that investigation, by the way, do  
16 you know, the car incident?

17 A. I think it might have been done by maybe the  
18 captain of the SWAT Team.

19 Q. Captain Hal Smith?

20 A. Pyle maybe. Hal Smith wouldn't have been there.

21 Q. When did this happen, do you know that?

22 A. No.

23 Q. Was it your first year in office?

24 A. No, but I don't know the exact date or year, but

1           it definitely wasn't the first.

2           Q.    Was there a video of the incident?

3           A.    I believe there might have been video.  I believe  
4                -- I'm not positive.  I believe the feds may  
5                have had a video.

6           Q.    Let me just get these exhibits out of the  
7                way.  Are you aware of any threats that  
8                Sergeant Patricelli made against other  
9                sheriff employees, other than Mr. Gorman?

10          A.    I can't offhand.  That there was actually  
11                complaints filed?  Guys are arguing down there  
12                from time to time.  It's an environment where  
13                people tend to --

14          Q.    Okay.  Are you aware of any threats made, again  
15                by Anthony Patricelli, to other staff members?

16          A.    I'm not aware of anything that was brought to my  
17                attention, like a complaint or anything.

18          Q.    I just want to also clarify something else.  
19                There are cameras in the correctional facility?

20          A.    Yes.  In certain areas, yes.

21          Q.    Is there a monitoring station for those cameras?

22          A.    There is.  I believe it had been moved from time  
23                to time, but there was a monitoring station when  
24                we first put it in.

1 Q. Did Anthony Patricelli have access to those  
2 cameras in his office?

3 A. He may have had access. I don't know if he had  
4 access to all cameras, but he had access to some  
5 cameras.

6 Q. And that access would have been unmonitored?

7 A. I believe they would have, yes.

8 Q. Why would he have a bank of cameras in his  
9 office?

10 A. I think his position was considered facility  
11 security, so --

12 Q. Facility security?

13 A. Yeah.

14 Q. And again, just for clarification, would he still  
15 be answerable to the --

16 A. Lieutenant.

17 Q. Would that have been Hal Smith?

18 A. There was several lieutenants. Hal Smith was a  
19 lieutenant and became captain, but there would  
20 have been a lieutenant.

21 Q. That he would have been answerable to?

22 A. Yes.

23 Q. Tell us about -- can you tell us -- you had a  
24 chance to observe Patricelli at times. Can you

1 tell us about his demeanor? Was he one to go off  
2 the handle, so to speak?

3 A. He is -- I'd say he can be intense at times. I  
4 don't know if he would go off the handle for no  
5 reason.

6 When I ran the drug unit, he worked out of  
7 my office. He was very good at what he did. He  
8 was a hard charger, kind of intense guy. I seen  
9 him get angry from time to time. I don't know if  
10 it would be for no reason.

11 Q. All right.

12 MR. SORSBY: I'm trying to limit our  
13 exhibit numbers. Bear with me one second. Can I  
14 get this marked as one whole exhibit?

15 (Exhibit 54 marked for identification.)

16 Q. Now, just to give us relevance to these  
17 documents. The time in question when Mr. Gorman  
18 was employed -- so this would have been in the  
19 final -- the last quarter of 2013, the October  
20 period. The person in charge of the correctional  
21 facility, again, for the day-to-day operations,  
22 would that have been Hal Smith or would that have  
23 been some other person?

24 A. Part of when Mr. Gorman was there, Ruth Vibert



1           was there. And I don't know at what point in  
2           time she left, but I think she was there during  
3           this time.

4           Q. Now, to the extent that a correctional officer  
5           files an incident report, who are they to file  
6           the incident reports with?

7           A. If it's a correctional officer, they file the  
8           report and it would work its way up the chain of  
9           command from sergeant, lieutenant, captain,  
10          chief.

11          Q. Would it work it's way up to you?

12          A. In some situations. I may not see it in a couple  
13          cases we discussed earlier today.

14          Q. I just want to clarify that, too. My thinking of  
15          chain of command is everything has to go through  
16          you before it goes to the sheriff, but you're  
17          saying that's not necessarily --

18          A. It didn't happen all the time like that, no.

19          Q. So the person that's bringing it up the chain of  
20          command could decide whether it would go to you  
21          or the sheriff; is that true?

22          A. I guess it could be true that they could decide,  
23          or if the sheriff tasked them with something,  
24          they could go back to him.

1 Q. So they had options to go to you or the sheriff  
2 with a problem?

3 A. Yeah. I agree with that. They had an option  
4 that they had to go to.

5 Q. Okay. Now, to make life easier, I'm going to  
6 hand you Exhibit 54, but I'm going to start at  
7 the back and work our way forward.

8 A. Okay.

9 Q. I'm just going to show you. We'll start with the  
10 last page -- second to last page. That's the  
11 narrative.

12 A. The second to last?

13 Q. Yes. Do you recognize what that is?

14 A. It's an incident report from the correctional  
15 facility.

16 Q. Are these the type of incident reports that would  
17 have been filed during the time of Mr. Gorman's  
18 employment?

19 A. Yes.

20 Q. So these are documents the sheriff's office uses?

21 A. Yes.

22 Q. All right. And when do personnel file those?

23 A. When there's an incident and they want to file a  
24 report on something.

1 Q. Report an incident of what? What's the criteria?

2 A. I don't actually know what the criteria is. If  
3 you want to report something to a supervisor, I  
4 would suggest that they use this form.

5 Q. Is there something that's usually attached with  
6 that? Are there documents attached to that?

7 A. Let me see the back of this. If there's no --  
8 if there's no --

9 Q. If you look at the last page, what is that  
10 document titled?

11 A. That's a narrative.

12 Q. Are narratives usually --

13 A. They should be, yeah. They should be to explain  
14 what you're reporting.

15 Q. I'm asking you in the normal practice, in every  
16 incident report is there a narrative that's  
17 attached to it?

18 A. I can't answer that because I don't see every  
19 incident report, because it goes to corrections.  
20 Rarely would one of these come over to me unless  
21 it's a case we're investigating.

22 Q. Now, are you aware that Mr. Gorman has alleged  
23 that Anthony Patricelli called Mr. Gorman in  
24 October of 2013 and threatened him?

1 MR. MARTIN: 2012.

2 MR. SORSBY: 2012, yes.

3 A. That was the case we were talking about this  
4 morning with the Trooper?

5 Q. No, this was earlier.

6 A. I don't know if I was.

7 Q. What's the date on that incident report?

8 A. This is --

9 Q. That's the narrative, but you can look back at  
10 that. What's the date on the incident report?

11 A. It's 25 February, 2013.

12 Q. Okay.

13 A. Date of incident 22 January, 2013. So this  
14 report is a month after the incident.

15 Q. I'll give it back to you. The dates are a little  
16 out of order here. Hold on.

17 Do you recall receiving incident reports  
18 from Mr. Gorman in the period of October 2012?

19 A. I don't recall. Do you have them in front of  
20 you? I'll just take a look.

21 Q. Yes. There's one there for October.

22 A. The incident report is filed on the 25th of  
23 February, when the incident took place on the  
24 22nd of January. Unless you have the wrong

1 paperwork, but on this one, the incident took  
2 place on 9th of October of 2012 and the report is  
3 filed on the 25th of January, 2013. Why is there  
4 such a delay?

5 Q. Let me see the document so I know what you're  
6 referencing.

7 A. Wait a second. I'll give it back to you. This  
8 one is 8 October, 2012, and the date it's filed  
9 is 25 February, 2013. That's the date of the  
10 incident. That's the date the report is filed.  
11 I'm just wondering why there's such a lag between  
12 the date of the incident and the filing of the  
13 report.

14 Q. Have you seen these documents before today?

15 A. I probably have seen some. I want to look at  
16 them again. I know there was one where  
17 Mr. Gorman claimed to be hit by the door.

18 Q. That was the west hall incident?

19 A. I believe so, yes.

20 Q. Not the west hall incident -- go ahead.

21 A. Can I un-clip this? I'll keep them in order.

22 Q. Okay. That's fine. Do you recognize any of  
23 these yet?

24 A. I recognize some. I just want to see if one --

1 I think one is missing here. That's what I want  
2 to make sure.

3 Q. You believe there's an incident report missing?

4 A. Well, this goes with this. This does not have a  
5 narrative attached to it. I want to make sure.  
6 Maybe somebody put them out of order. It appears  
7 that the one date, November 5, 2012 and filed  
8 November 11, 2012 says transports. That doesn't  
9 have a narrative. But I have seen some of these.  
10 I don't know if I've seen all of them.

11 Q. Which ones have you seen, can you tell us?

12 A. I believe I saw the one about not saying hello,  
13 and this one here that follows where Christine  
14 LaFountain was a witness.

15 Q. What was the date of that one?

16 A. The date it happened was 22 January, 2013 and it  
17 was filed 25 February, 2013.

18 Q. Hold that for one second.

19 MR. SORSBY: Off the record.

20 (Discussion off the record.)

21 MR. SORSBY: Back on the record.

22 Q. And you were just saying you recognize the first  
23 one here, right?

24 A. Yes.

1 MR. SORSBY: Let's get that marked.

2 A. That's an incident report, date of incident  
3 22 January, 2013. The date the report is filed  
4 is 25 February, 2013. It says, "Location of  
5 incident: West hall staff interaction."

6 MR. SORSBY: Let's get this marked.

7 (Exhibit 55 marked for identification.)

8 MR. SORSBY: Back on the record.

9 Q. Do you recognize --

10 A. I remember hearing about this incident. I could  
11 have seen the report, but --

12 Q. What incident is this one?

13 A. This is about a key to Patricelli's office.

14 Q. Do you remember hearing about that?

15 A. I remember hearing about that.

16 Q. Who do you remember hearing that from?

17 A. It could have been Hal Smith. It could have been  
18 Dunham.

19 MR. SORSBY: I want to get that marked.

20 (Exhibit 56 marked for identification.)

21 A. This is the one that didn't have anything with  
22 it.

23 Q. What's that one?

24 A. This is a call he received when he was in Ryan's

1 office, and I do remember seeing that report.

2 Q. What's the date on that?

3 A. It's titled transport. The date is 8 October,  
4 2012 of the incident, and it was filed on  
5 25 February 2013. I still don't understand that,  
6 but --

7 MR. SORSBY: Let's mark that as exhibit 57.

8 (Exhibit 57 marked for identification.)

9 Q. We just talked about this one. Now it's marked  
10 Exhibit 57.

11 A. Exhibit 57.

12 Q. It's the key incident, and the date of the  
13 incident is October. Go ahead. You were reading  
14 from it?

15 A. The date of the incident is 8 October, 2012. The  
16 date the report was filed is 25 February, 2013,  
17 and it is related to a phone call that  
18 John Gorman got.

19 Q. And you remember seeing this?

20 A. I did. I remember seeing it, yes.

21 Q. You've seen this report before?

22 A. Yes.

23 Q. And now, do you remember the incident that he's  
24 describing?



1 A. I think I saw this report in a whole packet of  
2 reports that were together. I remember seeing  
3 this report.

4 Q. But the actual event happened in October of 2013?

5 A. Right.

6 Q. Do you remember learning of the event?

7 A. Prior to the date this was filed?

8 Q. Yes. Do you remember learning about the event?

9 A. I don't remember when I found out about the  
10 event. Like I testified prior to, some of this  
11 investigation was done prior to me receiving some  
12 of this, and I don't remember where. I don't  
13 remember where I fall in.

14 Q. I'm trying to help your memory and trying to  
15 figure out where you came in. All right.

16 You read this incident report, and when did  
17 you read this? When do you think you read this  
18 report?

19 A. I would have read it sometime after February 25,  
20 2013. I don't know if I was aware of it prior to  
21 that. I'm not sure, but I do remember seeing  
22 this report.

23 Q. Okay. So sometime after it was filed?

24 A. Right.

1 Q. Now, I'm still looking at 57. It says -- do you  
2 see on there in the narrative, it says, "Thank  
3 you, thank your brother, thank your wife"? Do  
4 you see that?

5 A. "Thank your wife, thank your brother." Do you  
6 want me to continue reading?

7 Q. Yes, please.

8 A. "Confused and alarmed. I asked, What are you  
9 talking about? Master Sergeant Patricelli then  
10 hung up the phone. I paused a moment, not  
11 knowing what exactly had just happened. I hung  
12 up the phone. I stood at the table for a few  
13 minutes, alarmed and concerned, not knowing what  
14 else he might do. Sergeant Rankin asked me if I  
15 was okay." It says, "I told him "no", but I  
16 wasn't ready to discuss anything. Continued with  
17 my assigned duties remainder of the shift."

18 Q. Now, you had stated earlier that you understood  
19 that there was -- that Mr. Patricelli --  
20 Gorman's sister had broke up with Patricelli.  
21 That's what you understood happened?

22 A. Yes.

23 Q. Do you know when that happened?

24 A. No, I don't.

1 MR. MARTIN: Did you answer the question  
2 about whether or not you knew --

3 THE WITNESS: No. I think that might have  
4 been the Trooper that was testifying.

5 MR. MARTIN: I don't think he answered your  
6 first question.

7 MR. SORSBY: Oh, okay.

8 Q. Did you --

9 A. I knew at some point in time they weren't  
10 together anymore.

11 Q. Do you know when?

12 A. I don't recall when, no.

13 Q. All right. Having read that, that "thank your  
14 wife and thank your brother", what do you think  
15 Anthony Patricelli meant by stating that?

16 A. Well, again, I think -- I think there was -- and  
17 I don't know the specifics on this and I don't  
18 know -- but I know that -- I think they thought  
19 that Mark Gorman, who was the highway patrol  
20 deputy, might have told Patricelli's girlfriend,  
21 John's sister or whatever, that there was a  
22 little something going on. And maybe that's what  
23 he's referring to with "thank your brother."

24 MR. SORSBY: Let's take a break.

1 (Whereupon, a brief recess was taken.)

2 MR. SORSBY: Back on the record.

3 Q. All right. Now, you were looking at an incident  
4 report that had no narrative affixed to it. Do  
5 you remember that?

6 A. It had "transport" on there. The title of it was  
7 "transport".

8 Q. Right. Just give me one second. All right. Now  
9 you're referring to this document, and you said  
10 it didn't have a narrative with it. Do you  
11 remember that?

12 A. That's correct.

13 Q. I think we may have found the document with the  
14 narrative, if you flip it over. Do you see that  
15 narrative?

16 A. So this should have been two sides. This didn't  
17 make a copy.

18 Q. That's correct. Do you see the date on the top?

19 A. 5 November, 2012.

20 Q. Now, if you flip it over -- if you flip this  
21 over, do you see that the date matches the  
22 incident report, the date of the incident?

23 A. This was a form that was filed on 11 November,  
24 and it's just referring to the incident on

1           5 November, even though this says here on the  
2           back on 5 November. That was filed on --

3       Q.    I understand. You said that a couple times.  
4           Having read both of those, the front and back of  
5           that, do you believe that's the narrative that  
6           goes with --

7       A.    Yes, I do.

8       Q.    That's what I'm asking. I don't want to include  
9           that. I want to include that, since that's the  
10          narrative.

11               MR. SORSBY: We will go ahead and have that  
12               marked when you're ready.

13               (Exhibit 58 marked for identification.)

14       Q.    I'm going to show you what's been marked as  
15           Exhibit 54. Let the record reflect I handed you  
16           Exhibit 54. Take a second to look at that.

17       A.    (Witness complied.)

18       Q.    Have you seen this document before?

19       A.    This was, I believe, part of the original packet  
20           I looked at when I looked at the incident here.  
21           It just -- I don't know if it was in that  
22           format, but I guess it was. I remember.

23       Q.    You've seen this document before?

24       A.    Yes.

1 Q. When do you remember seeing this document?

2 A. I don't remember. At some time during the  
3 investigation when they were looking into --  
4 actually, the same time I saw all of those  
5 documents, so I don't remember when.

6 Q. Now, did there -- I want to have you look at  
7 Exhibit 54 again. Do you see where it says who  
8 it's reported to at the top?

9 A. Chief Vibert.

10 Q. Now, these incident reports, you said you got  
11 them all at the same time. Did you get them from  
12 Chief Vibert?

13 A. When I got these originally, I think it was when  
14 she was investigating the incident.

15 Q. Okay.

16 A. When I originally saw these was when she first  
17 got them.

18 Q. Now, before we move on with these documents, I  
19 want to talk to you about when Chief Vibert gave  
20 you the documents. I want to clarify that what's  
21 been marked Exhibit 58 is the transport one we  
22 found the narrative for. Do you remember this  
23 incident being brought to your attention?

24 A. Give me a minute.

1 Q. Sure. Do you remember any of the allegations in  
2 there?

3 A. Yeah, I do, something over a key, maybe not  
4 signing for a pistol. I can't remember the  
5 specifics.

6 Q. We can move on from that. Now, you were given  
7 these incident reports by Chief Vibert. What did  
8 you do with them?

9 A. Originally I was just shown those incident  
10 reports by Chief Vibert. At a certain point in  
11 time, she came to me with a packet, and she was  
12 upset, and she was upset that the sheriff had  
13 told her to shred the report. I told her we're  
14 not shredding anything.

15 So I gave the packet -- I believe I  
16 testified in previous depositions, I couldn't  
17 remember if I gave it to Marcelle or the Sheriff.  
18 I said, "We're not shredding anything." I think  
19 the sheriff believes I gave it to him. That's  
20 what I did, I passed the packet on.

21 Q. And you said you believe it had the State Police  
22 investigation --

23 A. The report.

24 Q. That was the report we were talking about earlier

1 today?

2 A. Yes.

3 Q. And let me just -- I just want to make sure what  
4 exhibit number it is. I want you to take a look  
5 at it. You were here for that deposition, but we  
6 haven't shown you that.

7 I'm going to show you what's been marked as  
8 Exhibits 39 and 38. You probably recall us  
9 discussing this with Investigator Hock today?

10 A. I think there's another -- actually there's  
11 another general form that they --

12 Q. That's what I'm looking for. But while we're  
13 looking for that, do you recognize the  
14 documents --

15 A. I don't know if these documents were in that  
16 packet or not. I know there was some material  
17 from the State Police. I think it was the  
18 initial form you're looking for now.

19 Q. Exhibit 37?

20 A. It would have probably been -- it probably would  
21 have been that incident report that I noticed in  
22 the packet, and there was some other paperwork.

23 MR. MARTIN: That's the last two pages of  
24 Exhibit 37?



1 THE WITNESS: Let's see -- one, two, three,  
2 four, five, six, seven. It's the seventh page  
3 that I would have recognized.

4 MR. MARTIN: Just the seventh page?

5 THE WITNESS: Which I believe was on top.  
6 And like I said, there was other material, but I  
7 don't know what it was. And to identify this,  
8 it's a New York State incident report.

9 Q. Right. You're referring to Exhibit 37, correct?

10 A. Right. But for page numbers, we figured Page 7.

11 Q. All right. Do you recognize that document?

12 A. I'm almost positive it was the State Police  
13 incident report, when I opened that manila  
14 envelope up and pushed everything back in.

15 Q. You remember seeing something New York State  
16 Police?

17 A. New York State incident report. Here's what -- I  
18 remember seeing the two -- you know. This would  
19 have been by the New York State Police. So I  
20 remember seeing that. That's their report.

21 Q. You remember seeing a State Police report. Okay.

22 A. Something that indicated it was a State Police  
23 report.

24 Q. I just want to make sure. Do you remember seeing

1           this State Police report or you don't?

2           A.    I believe it was the State Police incident  
3                report. I would have to say that, yeah, to the  
4                best of my recollection, this is the first thing  
5                I pulled out and pushed everything back. Are we  
6                good?

7           Q.    That's fine. I'll hand it right back to you. I  
8                just want to see something real quick.

9                        Now, when did -- when did Chief Vibert come  
10               into your office? You said she came in  
11               distraught. Do you remember what that date was?

12          A.    I don't.

13          Q.    Do you remember if it was right after the  
14                incident?

15          A.    No, I can't recall.

16          Q.    If you don't remember, that's okay. All right.  
17                Now, you told her not to shred documents?

18          A.    I told her we're not shredding anything. Give me  
19                those, and I took them from her.

20          Q.    I've read other transcripts where you said  
21                basically the same thing, and one of the  
22                questions I have is why would you give the --  
23                Mr. Gorman's complaint to Sheriff Mahar when  
24                Vibert said that he threatened to destroy the

1 documents?

2 A. She told me that he said for her to shred them.  
3 I didn't hear him tell her that. That's what she  
4 told me. I wanted to make sure I gave them back  
5 to -- again, I wasn't sure if I gave them to  
6 Marcelle or the sheriff, but I gave them to  
7 somebody. And I wanted to make sure that they  
8 knew that I said that we're not going to shred  
9 anything.

10 Q. Why is it important that the documents not be  
11 shredded?

12 A. They were documents pertaining to an  
13 investigation. Why would we shred them? We  
14 wouldn't want to shred them.

15 Q. Why didn't you go to Sheriff Mahar and ask him  
16 why he was going to shred incident reports?  
17 That's a serious offense.

18 A. I was kind of thinking I didn't give them to him.  
19 He thinks I did. If he wasn't there, I would  
20 have talked to him another time.

21 Q. I understand you don't recall who you gave  
22 Mr. Gorman's incident reports to, but did you --  
23 I'm trying to understand why you would give the  
24 documents to somebody that it's been alleged

1           they're going to destroy those documents. Did  
2           you think that threat was real?

3                   MR. MARTIN: Object to the form of the  
4           question.

5           A. No. I didn't believe -- I didn't think that, if  
6           I gave them back to the sheriff, he would shred  
7           the documents, especially if I said I told her  
8           we're not shredding anything.

9                   I later one time had a conversation with  
10          him, and he was saying how, when he had the  
11          conversation with her, he was saying, I didn't  
12          want the State Police documents, and that's what  
13          he was referring to. We don't want them. So  
14          that's what he claimed he thought she had.

15          Q. Now, do you recall when you gave the documents to  
16          either the secretary or the sheriff, did you  
17          relay the threat that you had heard?

18          A. Yes.

19          Q. And what did you --

20          A. Well, I don't remember who I gave them to, so I  
21          really can't recall what the response was, but I  
22          know at some point in time I had a conversation  
23          with the sheriff. And he said, "I didn't tell  
24          her to shred them. I told her to get rid of the

1 outside agency report. We don't need it."

2 Q. That was his response to you?

3 A. Yes, at some point in time.

4 Q. All right. Okay. Now, did you -- can you tell  
5 us, having received the incident reports from  
6 Vibert, and you gave the documents at some point  
7 to Sheriff Mahar's secretary, what did you do at  
8 that point in terms of investigating these  
9 complaints?

10 A. I don't remember at that point if I was the  
11 person investigating. I think Hal Smith had a  
12 part of investigating at the time. Ruth had a  
13 part of investigating at the time. And I don't  
14 know if it was at that point in time where I was  
15 going to do the investigation, or if they were  
16 conducting the investigation and they were going  
17 to bring me the results. Things changed down  
18 there in a certain amount of time pretty fast in  
19 terms of who was doing what. I don't recall.  
20 That was a while -- a couple years ago.

21 Q. So it's not clear to you who was tasked with  
22 investigating the incidents?

23 A. I know they were looking into the situation. I  
24 know Hal was looking into an incident where

1 Mr. Gorman claimed he was hit by a door, somebody  
2 slammed a door into him, and I think Dave Hetman  
3 might have been looking into that.

4 Q. Now, can you tell us if you followed up with  
5 Chief Vibert at all? She came to your office  
6 with the documents. Did you followup with her as  
7 far as what happened with the investigation?

8 A. At some point in time, Chief Vibert was let go.  
9 So I don't recall when that period was or where  
10 the investigation was in that timeframe where she  
11 was let go.

12 So it may have been not until she was let go  
13 that I actually said where this was going. I  
14 think at that point in time there might have been  
15 an arrest made, and the case was in the courts  
16 and we were waiting to see where the criminal  
17 case went first. A lot of things happened in a  
18 short period of time.

19 Q. Now, did there come a time when you were  
20 contacted by Mr. Tom Hendry in regards to  
21 Mr. Gorman?

22 A. I think he contacted me or I contacted him.

23 Q. Okay. All right. I'm going to ask -- I'll talk  
24 to you a little about that time when he contacted

1           you. I just want to segue back.

2           As part of the documents you were given,  
3           were you -- I'm going to show you what's been  
4           marked as Exhibit 41. We talked about this  
5           earlier. It's the -- it's an Order of  
6           Protection. Do you recognize this?

7           A. Yes.

8           Q. Did you see this document before, this specific  
9           document?

10          A. I don't believe I did.

11          Q. You were never given a copy of the Order of  
12          Protection in regards to Mr. Gorman?

13          A. I myself was not. Could it have been in that  
14          packet of documents? It could have been, but  
15          this is the first time I've seen it.

16          Q. And just to understand, when she gave you a  
17          packet of documents, did you look through all the  
18          documents?

19          A. No.

20          Q. All right. And just -- now, I understand you  
21          haven't seen this document before, but did there  
22          come a time you understood there was an Order of  
23          Protection against Anthony Patricelli?

24          A. Yes.

1 Q. Who brought that to your attention?

2 A. It might have been the sheriff that said there's  
3 an Order of Protection issued.

4 Q. Do you have a recollection of having a  
5 conversation with Mr. Hal Smith in regards to  
6 that?

7 A. I had several conversations with Hal Smith, but I  
8 don't recall what they were.

9 Q. You don't recall the substance of those  
10 conversations?

11 A. No, relative to Mr. Gorman. I had different  
12 conversations with Hal, but I can't remember if  
13 one of them pertained to the Order of Protection.

14 Q. You came to understand there was an Order of  
15 Protection?

16 A. Yes.

17 Q. Do you remember how you came to understand that?

18 A. No.

19 Q. Now, I was talking to you earlier about your  
20 contact with Mr. Hendry. The first time he --  
21 did he reach out to you?

22 A. I don't know if he initiated it or I initiated  
23 the contact, but I did have a conversation with  
24 him.



1 Q. In regards to Mr. Gorman?

2 A. In regards to Mr. Gorman.

3 Q. Okay. Now, did there come a time -- do you  
4 understand there came a time when Mr. Gorman  
5 filed a workplace violence complaint?

6 A. Yes.

7 Q. Do you remember when that was?

8 A. I don't.

9 Q. Do you remember that to be in February, 2013?

10 A. I believe that packet you had here, maybe Item 54  
11 or 57, was that.

12 MR. SORSBY: Off the record for a moment.

13 (Discussion off the record.)

14 MR. SORSBY: Back on the record.

15 Q. We were discussing earlier whether or not you  
16 came to understand there was a workplace violence  
17 complaint filed by Mr. Gorman, and you said  
18 "yes". I'm going to show you Exhibit 54. We've  
19 looked at this before.

20 A. Mm-hmm.

21 Q. Having looked at that again, do you recall now  
22 the first time you became aware of a workplace  
23 violence complaint being filed by Mr. Gorman?

24 A. I'm not aware of the date. I'm aware one was

1 filed.

2 Q. Do you recall becoming aware of it around this  
3 time?

4 A. Yeah. It probably would be around this time.

5 Q. And now, was that included in that packet that  
6 you were given by --

7 A. That I don't know. Like I testified before, I  
8 saw the State Police thing. I don't know what  
9 else was in there.

10 Q. All right. Now, did you investigate his  
11 workplace violence complaint?

12 A. I believe Tom Hendry did. He was the head of  
13 human resources. I did have conversations with  
14 him.

15 Q. He contacted you, you said?

16 A. I contacted him or he contacted me, but we did  
17 make contact.

18 Q. Do you recall the first time he made contact with  
19 you?

20 A. I don't.

21 Q. Do you remember what you talked about?

22 A. We talked about the incident, and he had  
23 paperwork provided to him on the incident. And  
24 he was looking for, I believe, phone call -- the

1 recording of a phone call that was made, and we  
2 provided him with that.

3 Q. How did you provide a copy of that to him?

4 A. I believe that went through Hal Smith. Hal Smith  
5 may have gotten -- Hal Smith or Dave Hetman may  
6 have gotten that for him.

7 Q. Now, do you know if that phone conversation has  
8 been preserved?

9 A. I do not.

10 Q. Anything else he discussed with you on that phone  
11 call?

12 A. I think just the case basically in general. You  
13 know.

14 Q. Did you discuss, at that time, the incident  
15 reports that you had reviewed, that you had  
16 received from Chief Vibert?

17 A. I'm trying to think. We discussed about the, you  
18 know, saying hello and not saying hello, and  
19 making a funny face, and smiling and not smiling.  
20 We discussed that. We discussed maybe the door  
21 incident where John was claiming to be hit,  
22 somebody slammed a door on him. We might have  
23 discussed that, but I don't recall the whole  
24 conversation. We did discuss John Gorman's

1 complaint.

2 Q. All right. Was that the only conversation you  
3 had with him regarding --

4 A. I might have talked to him a couple times. I  
5 talked to Tom from time to time, and that may  
6 have come up in a conversation, it may not have.  
7 How are we doing with this or --

8 Q. Now -- all right. Did there -- excuse me. Now,  
9 there came a time in June of 2013 when you met  
10 with Mr. Gorman; isn't that true?

11 A. Well, I don't know the date. I did meet with him  
12 at some point in time.

13 Q. You don't recall the date. Where did you meet  
14 him?

15 A. I believe he came to my office.

16 Q. And do you recall -- give me one second. All  
17 right. So he came to your office. Do you have a  
18 recollection of him informing you that Mr. Hendry  
19 was telling him that information wasn't being  
20 released to Hendry so he could complete his  
21 investigation, something like that?

22 A. I don't recall the conversation. He came to my  
23 office on what date?

24 Q. I don't know, but I'm asking, do you have a

1 recollection of around June?

2 A. That he said that Tom Hendry wasn't getting the  
3 information he needed?

4 Q. Did there come a time when Mr. Gorman came to  
5 your office and he informed you that Mr. Hendry  
6 was not getting the information he needed from  
7 the sheriff's office to complete his  
8 investigation?

9 A. He may have. I don't know why we wouldn't give  
10 Tom Hendry the information. We always would  
11 provide the information the county needs.

12 Q. Was there a problem with the release of the phone  
13 call that Mr. Patricelli made to Mr. Gorman?

14 A. If there was a problem with the release of the  
15 call, it probably would have been a problem  
16 getting the call. I don't think if we had the  
17 call -- if we had the call, I don't think we -- I  
18 don't see any reason why we wouldn't give it to  
19 him. So maybe it was a problem, we couldn't get  
20 the call or find the call on the system. I don't  
21 know how the system works.

22 Q. Do you know if the phone calls, the entire phone  
23 calls, were released without any edits?

24 A. I do not know.

1 Q. What, if anything, do you remember about the  
2 conversation you had with Mr. Gorman?

3 A. I don't -- I don't hardly remember the  
4 conversation. He said he came to my office and  
5 asked me why information wasn't being released.  
6 He may have asked me that. There would be no  
7 reason for us to stall in releasing the  
8 information. It wouldn't be to our benefit to do  
9 that.

10 Q. So are you aware that the sheriff's office was  
11 not releasing the tape of the phone call between  
12 Patricelli and Gorman?

13 MR. MARTIN: Object to the form.

14 MR. SORSBY: You can still answer.

15 A. You're saying the sheriff was not releasing it?

16 Q. Correct. Are you aware that the sheriff was not  
17 releasing the tape?

18 A. I don't know if that's true and I was not aware  
19 of it.

20 Q. All right. Now, Undersheriff Russo, did there  
21 come a time you when were aware there was a  
22 Department of Labor investigation into the  
23 sheriff's department, which would be a PESH  
24 investigation?

1 A. Refresh my recollection.

2 Q. It would be a violation of failure to adhere to  
3 the requirements for workplace violence?

4 A. I vaguely remember an investigation from Labor.

5 Q. Do you remember being a part of that  
6 investigation?

7 A. No. Maybe our counsel handled the investigation.  
8 I don't know. If you have some paperwork that  
9 would refresh my memory, I'd love to see it.

10 Q. I very well may. I show you Exhibit 8. Have you  
11 had a chance to look at that? Is it starting to  
12 come back to you now?

13 A. I have. I'm still looking it over, but I do  
14 remember somebody from the New York State  
15 Department of Health coming and speaking to  
16 myself, John Panichi and Walt Spallane.

17 Q. So there was an investigation by the New York  
18 State Labor, Public Employment Safety and Health?

19 A. Mm-hmm. Right.

20 Q. Were you at the investigation?

21 A. I was at the initial meeting where they told us  
22 what was happening, what they were investigating.  
23 I believe they talked to us a little bit. They  
24 were told that Tom Hendry was investigating the

1 complaint. And I believe the inspector or  
2 investigator, whatever he was, was going to go up  
3 and speak with Tom Hendry. We must have gotten  
4 some kind of report back from them.

5 Q. You're looking at --

6 A. This is the report from them?

7 Q. Yes. If you turn the first page over, it's right  
8 there. One more.

9 A. This is a notice of violation. I'm looking for  
10 some kind of report back from them.

11 Q. I think the whole thing is the report. Okay.

12 I'm going to show you another exhibit.  
13 Maybe this is the exhibit you're looking for.  
14 This is Exhibit 7.

15 A. Okay. This looks like they reported and said  
16 they needed another person interviewed.

17 Q. Let me ask you. Have you seen these documents  
18 before?

19 A. Well, I know I probably -- I mean, I was at this  
20 meeting, so whatever we got prior to that meeting  
21 I would have seen. I probably -- if this was  
22 prior to that meeting, notice of violation, I  
23 probably would have seen that. I attended this  
24 meeting, and I do not know if I saw the followup



1 investigation. Did it go to Tom Hendry? No, it  
2 came to us.

3 Q. What did you understand the violation to be?

4 A. Well, they told us we did not implement a written  
5 policy statement on the employer's workplace  
6 violence prevention program and goals and  
7 objectives, and I think Tom Hendry corrected  
8 that.

9 And then the other one is separate line of  
10 recordable occupational illnesses and injuries  
11 were not maintained, and I think we rectified  
12 that situation.

13 MR. SORSBY: Mr. Martin, I'm going to  
14 borrow that back so we can keep the process going  
15 here.

16 Q. I just want you to read the second to last page  
17 of Exhibit 8 and paragraph (a), lower case (a)?

18 A. "Rensselaer County sheriff's department, the  
19 employer's implementation of a workplace violence  
20 prevention policy was unsuccessful. One of the  
21 three witnesses named in the April 8, 2013 letter  
22 to the employer was not interviewed. The  
23 employer's policy statement says that all acts of  
24 workplace violence against employees will be

1           thoroughly investigated." So this says that one  
2           person was not interviewed.

3           Q. Does it also say the requirement is all witnesses  
4           were to be interviewed?

5           A. Yes.

6           Q. Did you understand that to be the workplace  
7           violence policy, as well, that all witnesses are  
8           to be interviewed?

9           A. I think that any -- I don't know if I understood  
10          that to be the workplace, but I would think you  
11          would interview all witnesses.

12          Q. All right. Now, you said you were present at  
13          this -- at the first time the investigators from  
14          PESH came. So that would have been -- do you  
15          have an idea when that would have been, the date  
16          of that when the investigators first came?

17          A. I believe we had a date of 5/7/2013. That may be  
18          the date -- it says Rensselaer County Sheriff's  
19          Department, 4000 Main Street, date of  
20          investigation, 5/7/2013 and it's got an  
21          inspection number. And they received their  
22          complaint on April 11th.

23                 So, you know, I don't know for sure, but I  
24          would say that's probably the timeframe when they

1           came.

2           Q.   What did you do when you became aware that the  
3               sheriff's department was cited for -- by PESH for  
4               failing to interview all witnesses?

5           A.   I personally didn't do anything. I know we were  
6               -- Tom Hendry, I believe, was going to -- they  
7               may have gone back and interviewed the other  
8               witness at that time, but whatever the violations  
9               were, we were going to correct them.

10          Q.   Now, do you have -- do you know when Mr. Hendry  
11               completed his investigation into the workplace  
12               violence?

13          A.   That's a question for Tom Hendry. I don't know.

14          Q.   Now, do you have -- do you know -- you said  
15               this was dated around May of 2013. Do you know  
16               if at that time he still conducted his  
17               investigation?

18          A.   That I don't know. I don't recall.

19          Q.   Now, you said you had a meeting with Mr. Gorman.  
20               Just for clarification, do you recall at that  
21               conversation, during that conversation,  
22               Mr. Gorman mentioned that Tom Hendry was  
23               investigating a workplace violence complaint?

24          A.   Well, I think earlier you said that Mr. Gorman

1           complained that Tom Hendry was not getting the  
2           information he needed. So he would have had to  
3           tell me that he was investigating a workplace  
4           violence complaint if he wasn't getting the  
5           information he needed.

6           So I guess based on what you're telling me,  
7           my answer would be that we had to know Tom Hendry  
8           was investigating workplace violence.

9       Q.    I appreciate you drawing a conclusion, but I just  
10       want to know, do you know --

11      A.    If I knew Tom Hendry was investigating a  
12       workplace violence at that point?

13      Q.    Yes.

14      A.    Yes.

15      Q.    All right. Can you just tell us why Mr. Hendry  
16       would be investigating Mr. Gorman's workplace  
17       violence complaints in June of 2013 when these  
18       incidents all happened, it would appear, from  
19       February of that year backwards? Why would he  
20       still be investigating this in June?

21      A.    Can I just look?

22      Q.    Sure. If you don't know --

23      A.    I wanted to see. I remember we had a question on  
24       when the incident happened and when it was

1 reported. Is that these?

2 Q. I don't know.

3 A. I don't -- the simple answer is I don't know.

4 Q. That's all right. That's an acceptable answer.

5 If you don't know, you don't know. All right.

6 We can move on from that line of questioning at  
7 this point.

8 Now, can you tell us, are you familiar with  
9 general obligations law 207-c?

10 A. No, I'm not.

11 Q. Are you familiar with 207-c as it relates to the  
12 collective bargaining agreement?

13 A. Yes.

14 Q. What's your understanding of 207-c?

15 A. If somebody files for 207-c, they have an  
16 obligation to bring you all the information to  
17 determine whether you are -- you base your  
18 determination on what you have in front of you at  
19 the time.

20 Q. Who makes that determination?

21 A. The sheriff can make it. At one point in time he  
22 was making it. I was making it on some cases.  
23 Whoever he tasked with it made it, and that would  
24 be me in the case of Mr. Gorman.

1 Q. Now, how do you make the determination who is  
2 eligible for 207-c benefits?

3 A. They file for 207-c. They bring -- they have a  
4 hearing where they bring in paperwork that's  
5 related to their -- to justify their asking for  
6 207-c, and then you make a determination based on  
7 information they have or information they provide  
8 you. Some may be medical, some of it may be  
9 internal reports, whatever they have.

10 Q. So you receive documents from the claimant, the  
11 one making a claim for 207-c, and then you make a  
12 decision.

13 So what I want to know is how do you  
14 determine if someone is eligible for 207-c  
15 benefits, as you understand it?

16 A. Well, I'd have to see what they're claiming. It  
17 would be like an on-the-job injury, something  
18 related or caused by their performance of duty in  
19 the sheriff's office.

20 Q. So it has to be caused by their performance of  
21 duty, that's what you understand to be the  
22 criteria for 207-c eligibility?

23 A. Yes.

24 Q. And did you -- so now Mr. Gorman made an

1 application for 207-c benefits?

2 A. Yes.

3 Q. And you received that application?

4 A. Yes.

5 Q. And you received medical documents, as well?

6 A. Yes.

7 Q. From Mr. Gorman and his doctor?

8 A. Yes.

9 Q. And what was the conclusion of those medical  
10 documents?

11 A. Well, ultimately his 207-c was denied.

12 Q. I understand. You received medical documents as  
13 part of the application?

14 A. I'd have to look at it. If you have the 207-c  
15 packet, I can look at it.

16 Q. Do you recall his doctor indicated he had a  
17 psychological injury?

18 A. His doctor indicated he had a psychological  
19 injury. I don't know if it indicated it was a  
20 cause of his job. I know Mr. Gorman was  
21 interviewed by a different psychologist and he  
22 came --

23 Q. Why would his doctor make a determination if it  
24 was related to work? Isn't that a determination

1           you would make?

2           A.   Well, he has to give us some reason why he thinks  
3           he has the problem that he thinks. I mean, you  
4           would have to -- you'd have to give me some  
5           reason why -- if I came to you and I said, I have  
6           a concussion. And -- well, where did you get it?  
7           At work. Well, wouldn't a doctor say, "Well, he  
8           has a concussion because he hit his head on the  
9           wall at work"?

10          Q.   I'm asking you. What informs -- we're going to  
11          come back to that.

12               Who gave you or delineated to you the  
13          requirements for 207-c eligibility?

14          A.   I think all our 207-c's are looked at by the  
15          county attorney, so we're kept on track or  
16          steered by the county attorney.

17          Q.   In Mr. Gorman's case, did you get your definition  
18          of 207-c eligibility from the county?

19          A.   We conferred with the county attorney on  
20          Mr. Gorman's case, I know that.

21          Q.   Did you look at any regulations?

22          A.   I may have at the time, but I'm not sure.

23          Q.   You don't know if you actually looked at the  
24          general municipal law 207-c?



1 A. No, I did not.

2 Q. And I just want to narrow this down. How is it  
3 you were able to determine he was not eligible  
4 for 207-c?

5 A. I made that determination based on the material  
6 in front of me at the time I made the  
7 determination. And Dr. McIntyre stated he  
8 believed Mr. Gorman had some psychological  
9 issues, but they were not caused by his  
10 employment at the sheriff's office.

11 Q. They were not caused by. Okay. And is there any  
12 policy or guidelines that you read before  
13 granting 207-c benefits or denying them?

14 A. I would confer with the county attorney. If I'm  
15 not mistaken, I think we went to a hearing on  
16 this and were upheld on our decision.

17 Q. I'm focusing right now on how you come to the  
18 determination that somebody's eligible for 207-c.

19 A. Dr. McIntyre's report had a lot of weight to it.  
20 I know you know, but I think an arbitrator held  
21 up my decision for the denial of 207-c. I'm sure  
22 that's what happened. I just don't want you to  
23 get the impression that I did this because I  
24 don't like Mr. Gorman. That's not the case. I

1 never really had a problem with him. I'm just  
2 saying I think I was on pretty good ground when  
3 an arbitrator rules in my favor.

4 Q. That may be. I'm trying to get to and trying to  
5 understand how you come to the determination  
6 somebody is eligible for 207-c. And you said the  
7 criteria you used is whether or not it was caused  
8 by work. And I asked you whether or not you read  
9 general municipal law 207-c before you made  
10 Mr. Gorman's determination, and you said no.  
11 It's important to know how you come to that  
12 determination.

13 A. Along the route, we confer with the county  
14 attorney.

15 Q. Why would you confer with the county attorney?

16 A. Because they're the ones that are ultimately  
17 going to pay the 207-c, the county.

18 Q. Again, you didn't read the general municipal law  
19 207-c?

20 A. I did not, no.

21 Q. So why would you talk to the county attorney?

22 A. Why would I talk to the county attorney?

23 Q. Yes.

24 A. Because the county has an interest in 207-c.

1 Q. I know the county does, but the county attorney,  
2 did you --

3 A. The county attorney represents the county. He  
4 should know whatever general law --

5 Q. 207-c. That's what we're talking about, 207-c  
6 benefits. Did your determination, denial of his  
7 207-c benefits, was that reviewed by the county  
8 attorney?

9 A. I believe so, yeah.

10 MR. SORSBY: I might need to clarify. It's  
11 an outside attorney, right, who is hired by the  
12 county that does these?

13 MR. MARTIN: Yes.

14 THE WITNESS: He's not the county attorney.  
15 Brian Goldberger is a deputy county attorney or  
16 part-time county attorney. He gets paid as  
17 part-time county attorney. He's the one that we  
18 deal with all the time.

19 MR. SORSBY: Let's keep this on the record.

20 Q. So who is Pechenik?

21 A. He is the county attorney.

22 Q. And who is Goldberger?

23 A. He's an assistant county attorney.

24 Q. So when you were talking about the county

1 attorney, you weren't talking about Pechenik?

2 A. No.

3 MR. SORSBY: Let's get this marked.

4 (Exhibit 59 marked for identification.)

5 Q. I show this to you, Exhibit 59. Have you had a  
6 chance to look at it?

7 A. Yes.

8 Q. What is it?

9 A. 207-c packet.

10 Q. Do you recognize this document?

11 A. My answer to John Gorman on his 207-c  
12 application, and attached is medical  
13 documentation to go along with it.

14 Q. Did Mr. Gorman meet with you in person regarding  
15 his application for 207-c?

16 A. I believe we had a meeting in my office on the  
17 initial -- on his initial hearing.

18 Q. Okay. All right. And did he give you -- did he  
19 give you documents at that time?

20 A. I don't remember what documents he gave me. I'm  
21 not sure he gave me an application. I'm not sure  
22 what documents. Some documents were obtained  
23 from other sources, and he may have provided  
24 some. I don't recall.

1 Q. Now, you testified earlier that you had received  
2 from Ruth Vibert incident reports regarding --  
3 incident reports that Mr. Gorman had filed, and  
4 that you gave them back along with the State  
5 Trooper's report, and you gave them to Marcelle  
6 or Sheriff Russo?

7 A. Mahar.

8 Q. Sorry. You are Undersheriff Russo. Did you  
9 include those documents as part of your  
10 investigation?

11 A. No.

12 Q. Why didn't you include those as part of your  
13 investigation?

14 A. My understanding of 207-c is it's related to a  
15 medical situation, and those documents really  
16 didn't have anything -- other than -- I don't  
17 even know what was in there, but the fact he was  
18 claiming he got hit by the door might have been  
19 some part of medical.

20 Q. Now, why didn't you think that -- you said you  
21 didn't think -- only medical was relevant.  
22 Wouldn't the incident reports describing  
23 incidents at work be relevant to whether or not,  
24 I think in your words, it was caused by work?

1 A. I think he had the opportunity, when he spoke to  
2 the psychiatrist, to lay all that out, and  
3 apparently the psychiatrist said he does have a  
4 problem but it's not connected to work.

5 And like I testified before, apparently the  
6 arbitrator felt the same way, because he affirmed  
7 my decision.

8 Q. You keep saying that, but I want to focus on you.

9 A. To answer your question, the incident reports, I  
10 did not include those documents in there.

11 Q. Well -- and I'm asking, did you not feel they  
12 were relevant to whether or not it was caused by  
13 work?

14 A. I think it was John's obligation, when he talked  
15 the psychiatrist, to make that well known. And  
16 if the psychiatrist wanted to refer to that, he  
17 could do that.

18 Q. Which psychiatrist?

19 A. Either one, McIntyre or --

20 Q. So you are relying on his report to determine  
21 whether or not it was caused by work, related by  
22 work?

23 A. That's what I basically made, put a lot of weight  
24 in my decision, on Dr. McIntyre's report.

1           Now, we send people to Dr. McIntyre all the  
2           time. Sometimes we like what Dr. McIntyre says  
3           and sometimes we don't like what Dr. McIntyre  
4           says. He says stuff that isn't in our favor.  
5           It's kind of like when we send them there, we're  
6           looking for a professional opinion. Whatever way  
7           the chips fall, they fall. In Mr. Gorman's case,  
8           they didn't fall in his favor, but I have no  
9           control over that.

10        Q. All right. Now again, who is tasked with making  
11        the determination that an individual is eligible  
12        for 207-c benefits? Is it the medical  
13        professional, or is it your job to do that  
14        ultimately?

15        A. Well, I ultimately would -- I shouldn't say "I".  
16        The sheriff or whoever he tasks can ultimately  
17        make a decision on 207-c. Right now, in the  
18        correctional facility, the chief is handling the  
19        207-c. I did a few of them. The sheriff did a  
20        few of them. I base my decision on the  
21        information I have in front of me at the time,  
22        which is this packet of information here.

23        Q. Didn't you also have the incident reports?

24        A. They were filed with the department. I don't

1 know if I had every one.

2 Q. You had access to them?

3 A. Yes.

4 Q. You said you base it on the information you have.  
5 Why didn't you refer to the incident reports?

6 A. Well, if I referred to the incident reports, or  
7 what I knew of them, it probably wouldn't have  
8 made a difference because, for example, on the  
9 incident report of where John Gorman claimed he  
10 got slammed with the door, basically that  
11 investigation proved that or showed that the door  
12 basically closed on him. It wasn't like somebody  
13 slammed the door on him. I had the captain in my  
14 office demonstrating how the door closed on him.  
15 That probably wouldn't have put a weight onto the  
16 fact -- that wasn't a situation where harassment  
17 or violence occurred.

18 A couple other where you're walking down the  
19 hall, somebody doesn't say hello, somebody  
20 doesn't smile at you. I base my decision on the  
21 professional that we send somebody to, to make a  
22 professional -- professional conclusion of where  
23 the problem lies.

24 Q. What about the February incident of aggravated



1 harassment?

2 A. On the phone?

3 Q. Sure. We had a State Trooper here this morning.

4 You didn't include that in there, did you?

5 A. No, but I think he talked to the psychiatrist

6 about that and he --

7 Q. I'm not asking that. I'm asking if you included

8 that in your report?

9 A. No, I didn't include that in my report.

10 Q. Why did you not include that in your report?

11 A. It wasn't necessary.

12 Q. Why?

13 A. It wasn't necessary. All my report is based on

14 is what the doctor said and the -- the

15 information I had in front of me at the time,

16 which is Mr. Gorman's obligation to provide.

17 And again, my decision was upheld, affirmed

18 by an arbitrator, which I think that speaks

19 volumes.

20 Q. Again, I want to know how you came to your

21 determination?

22 A. I think, so we can wrap that question up, my

23 determination was based on information I received

24 from Dr. McIntyre's office, which I previously

1 testified to. And basically it says I found  
2 Dr. McIntyre's assessment to be based on a  
3 comprehensive review of the issues raised in  
4 Gorman's GML 207-c application and documents  
5 submitted in support thereof.

6 Dr. McIntyre clearly concluded that while  
7 Officer Gorman may have psychological issues,  
8 they are not related to the performance of his  
9 duties. And that's what I based my decision on.

10 Q. As opposed to the numerous incident reports that  
11 you looked at?

12 A. That's my answer. I think you're beating a dead  
13 horse.

14 Q. I'm not beating a dead horse.

15 A. I think we're going around and around.

16 Q. Let me ask you a question. Do you think you have  
17 a duty to review all the documents you have  
18 access to when you do your investigation for a  
19 207-c report?

20 A. I have a duty to review what the applicant  
21 provides us, and I was aware of a lot of the  
22 documents. I don't know if I had every one, but  
23 I was aware of them. And I don't think that  
24 would change at all as far as my ruling on it.

1 MR. SORSBY: Could you mark this?

2 (Exhibit 60 marked for identification.)

3 Q. Well, first, let's establish -- do you recognize  
4 the collective bargaining agreement for the  
5 sheriff's department?

6 A. Yes.

7 Q. If you could turn to the page that's tabbed.  
8 Could you read the highlighted section for us?

9 A. "The sheriff or the sheriff's designee shall  
10 promptly review an application timely made and  
11 other pertinent information, documents, or  
12 evidence available in reaching his or her  
13 determination in each case. The sheriff or the  
14 sheriff's designee may consider relevant arbitral  
15 or judicial decisions or any other information  
16 which may be available."

17 Q. Do you see where it says "any information  
18 available at the time"?

19 A. Right.

20 Q. Do you remember reading that?

21 A. Yes.

22 Q. All right. So do you not believe that there was  
23 a requirement, according to the collective  
24 bargaining agreement, that you had to review all

1 the information that was relevant at the time or  
2 available at the time?

3 A. Well, I think at some point in time I read the  
4 information. It's not contained in this packet,  
5 but anything that I read, I'm sure was in my mind  
6 when I made this decision.

7 Q. And you said something to this effect earlier. I  
8 just want to clarify it. You believe that  
9 although the incident reports weren't included as  
10 part of you 207-c determination, you don't  
11 believe that they would have changed the  
12 determination; is that true?

13 A. No, because I have the psychiatrist that says he  
14 has some psychological issues, but they're not  
15 related.

16 Q. That's what I wanted to know. So they would not  
17 have changed the decision had you included them  
18 as part of your determination?

19 A. No, I don't believe so. No.

20 Q. Now, you were relying on the doctor's  
21 determination that it was not related to work,  
22 correct?

23 A. Yes.

24 Q. Now, the incident in February where

1 Sergeant Patricelli called Mr. Gorman and  
2 threatened to break his fucking jaw, as is  
3 recorded on the State Trooper's report, you don't  
4 believe that occurred during -- as part of his  
5 employment?

6 A. I don't -- he called him when he was in the  
7 office. That's the one you're talking about?

8 Q. Yes.

9 MR. MARTIN: Object to the form.

10 A. It may have -- I don't believe that -- I don't  
11 believe that phone call, if -- and I don't know  
12 the gist of that phone call, but I don't believe  
13 that phone call in itself would cause you to have  
14 psychological problems. I'm not a psychiatrist.  
15 Apparently Dr. McIntyre took that into  
16 consideration.

17 Q. I understand that, and he's a doctor, and he made  
18 that determination. I'm asking you --

19 A. I mean, if somebody called me up and said that to  
20 me, am I going -- you know, you might say, He  
21 shouldn't have said that or whatever, but it's  
22 not going to cause me psychological problems.

23 Q. You're answering a question I haven't posed to  
24 you. I'm asking you, is that not work-related?

1 A. Well, it happened at work, but it's not  
2 work-related in the sense that it's between  
3 John Gorman's sister, and John and Mark Gorman,  
4 and Tony Patricelli. They have a child together.  
5 I don't know if you would call it common law.

6 So there's a lot of outside factors. The  
7 incident happened at work, but work wasn't the  
8 driving factor of it. It wasn't like, "Hey, I  
9 want to be the master sergeant and  
10 not Patricelli.", or "Hey, you're not going to be  
11 the master sergeant." This is all personal  
12 issues that the phone call happened to be made  
13 when he was at work, but it wasn't a work-related  
14 issue. I guess that's my best answer.

15 Q. So it happened at work but it's not related to  
16 work; is that what you're saying?

17 A. Yeah. No. So the phone call happened to happen  
18 to take place at work, but the backbone of the  
19 phone call or the driving factor of the phone  
20 call, whatever, was personal issues outside the  
21 scope of employment.

22 Q. All of these incidents, all the incident reports  
23 that you reviewed today, all of the incidents  
24 happened at work, correct?

1 A. No. I think he had a phone call at his house.

2 Q. Your position is if an incident happened at work,  
3 if it's not related to work specifically, it's  
4 not caused by work; is that your understanding?  
5 That's your belief?

6 A. That's Dr. McIntyre's belief.

7 Q. Well, what's your belief?

8 A. My belief was I based my decision on the  
9 information I had in front of me at the time, and  
10 that's what my belief would be.

11 Q. Okay.

12 MR. SORSBY: Let's take a thirty-second  
13 break real quick.

14 (Whereupon, a brief recess was taken.)

15 MR. SORSBY: Back on the record.

16 Q. Now, I'm going to show you -- we were looking at  
17 Exhibit 59 earlier. This is Mr. Gorman's initial  
18 207-c application. Do you recognize that?

19 A. Right.

20 Q. Do you see in the body it says "workplace  
21 violence"?

22 A. Yeah.

23 Q. All right. Now, did you include Mr. Gorman's  
24 workplace violence complaints in your 207-c

1 determination?

2 A. Did I include them in this packet?

3 Q. Correct.

4 A. No.

5 Q. Did you review them before you made your  
6 determination?

7 A. I was aware of them for the most part. I don't  
8 know if I was aware of all of them, but the ones  
9 I saw I was aware of.

10 Q. You're aware of the one in February. Again, this  
11 is the one -- let me see what exhibit this is.  
12 It is --

13 MR. MARTIN: It starts with 54, I think.

14 MR. SORSBY: That's okay. We'll find it.

15 Q. When you made your determination for 207-c  
16 eligibility, you said you were aware of the  
17 February workplace violence complaint?

18 A. I said I was aware of some of them. We've got to  
19 find the February one so I can take a look, or  
20 you can tell me which one it was.

21 Q. Here's Exhibit 54. Do you remember we were  
22 talking about that?

23 A. Yes.

24 Q. Well, were you aware of that incident, that



1 workplace violence complaint?

2 A. That he -- that Mr. Patricelli called him at his  
3 residence?

4 Q. Yes.

5 A. Correct.

6 Q. You said you recall seeing a State Trooper's  
7 incident report that Chief Vibert gave you?

8 A. Yes.

9 Q. Did you consider that State Police report and  
10 that workplace violence complaint when you made  
11 your determination for 207-c eligibility?

12 A. This occurred at his residence?

13 Q. Yes.

14 A. Basically, I made my determination based on  
15 Dr. McIntyre's conclusion, that it is not due to  
16 his job as a corrections officer.

17 This all -- all this all has to do with  
18 Mark Gorman, John Gorman, Kim Gorman,  
19 Tony Patricelli, and the baby they all have in  
20 common, off-duty. And there happens to be some  
21 incident or some of the issues occur when they're  
22 working, but the gist -- the problems that caused  
23 the psychological issues are family inner  
24 whatever -- inner circle problems and not the

1 work as the correctional officer. I mean, this  
2 is what Dr. McIntyre is saying. He's the  
3 professional. That's what I base it on.

4 I know, you know, if somebody slams the door  
5 into you and you perceive that as being violent,  
6 but the people that were there said that's not  
7 what happened. The door closed on him, it wasn't  
8 like somebody slammed it on him. It was John's  
9 perception over the people that witnessed it  
10 there.

11 Do I know it happened? Yes. Does it weigh  
12 a lot into my decision to grant 207-c? No.

13 Q. You didn't believe those were work-related; is  
14 that what you're saying?

15 A. Let's take the one with the door again, where the  
16 door closes on him. First of all -- and the  
17 captain demonstrated it several times. The door  
18 just closed on him. It didn't hit him hard  
19 enough to do -- now, he's not claiming 207-c  
20 because he's got an injury from the door. He's  
21 claiming a psychological injury. Well, a door  
22 closing on you is not going to cause a  
23 psychological injury unless you're paranoid  
24 enough to perceive that somebody is trying to

1 kill you with a door or something. I think that  
2 the psychiatrist asked him all these questions.

3 Q. Since we're talking about the reason he's asking  
4 for 207-c, let's look at his application if you  
5 don't mind. If you want to open it up and look  
6 at his application again?

7 A. Yes.

8 Q. Does it not say, "Related to retaliation from  
9 workplace violence complaint"?

10 A. That's his impression of it. This isn't a doctor  
11 saying it. This is an employee's statement.  
12 "Officer went to primary care physician due to  
13 chest pains and elevated blood pressure due to  
14 work related stress, work related -- retaliation  
15 from workplace violence." That's John going to  
16 the hospital and saying, "I have chest pains from  
17 workplace violence." He can't determine why he  
18 has chest pain. Maybe he's having a massive  
19 coronary.

20 Q. I'm asking you how you made the determination and  
21 what evidence you looked at, and I'm asking you  
22 what he asked for -- for 207-c? Okay. And what  
23 that -- what were the allegations he made? So  
24 that's why I had you look at that.

1 A. I have a packet here. It has a lot of documents  
2 from St. Peter's Hospital, medical chart, it  
3 looks like EKG.

4 Q. Did you look at any documents from Dr. Thalmann,  
5 Mr. Gorman's doctor?

6 A. Whatever documents were here.

7 Q. Let's show you what's been marked Exhibit 31.

8 A. I mean, this is Dr. Thalmann's --

9 Q. Let's stop for a minute.

10 A. Okay.

11 Q. Have you seen this document before?

12 A. I believe. I believe we were all through this  
13 when we went through the 207-c hearing. Go  
14 ahead.

15 Q. You seen this document before. How do you  
16 recognize this document?

17 A. It's from James Thalmann.

18 Q. Did you include this document as part of the  
19 207-c packet?

20 A. If it's in the packet.

21 Q. I'm asking you if you have a recollection?

22 A. A recollection of seeing it? If it was -- my  
23 best answer is if the doctor provided it to us,  
24 or John provided it to us, it should have been

1 part of this packet and it would be in there.

2 Q. Let's have you look at the third page on this,  
3 Exhibit 59. Now, see that first paragraph?

4 A. The third page is blank. Hold on. One, two,  
5 three. The third page is blank.

6 Q. Let's see here.

7 A. St. Peter's Hospital page.

8 Q. We're looking at your report, so we're looking at  
9 this page. Do you see it at the top?

10 A. Yes.

11 Q. Do you see the second sentence that says, "The  
12 letters from -- "?

13 A. Mm-hmm.

14 Q. It says, "The letters from Dr. Thalmann,  
15 furnished by claimant, indicate that he has  
16 symptoms. But do not connect those symptoms with  
17 Officer Gorman's performance of his duties as a  
18 correctional officer."

19 A. Right.

20 Q. All right. Now, can you do me a favor, and  
21 looking at Exhibit 31, can you read the  
22 highlighted part for me?

23 A. "Mr. Gorman related a fear of returning to work,  
24 particularly focused on work-related stress.

1 While numerous details were related, he feels  
2 that an issue about his sister's long-term  
3 personal relationship with the master sergeant  
4 began the events that directed against him. He  
5 is fearful to return to work, citing safety  
6 issues in the correctional facility."

7 Q. I'll take that back from you. Now, do you see --  
8 by reading the back of that page, do you see  
9 Dr. Thalmann's letter of August 1, 2013? You had  
10 just read that, right?

11 A. Yes.

12 Q. Now, just to keep the record clear, the date on  
13 this letter -- can you read the date on the  
14 letter?

15 A. November 18, 2013.

16 Q. So the letter is dated after the August letter  
17 that you reviewed as part of this; isn't that  
18 true?

19 A. Yeah. It appears to be, yes. So we did not have  
20 -- I mean, this should have been in before this  
21 determination was made. The doctor never sent us  
22 this, is that what you're saying?

23 Q. Let me ask the question. Did you receive this  
24 document? Do you recall receiving this?

1       A.    I don't recall receiving it. We could have  
2            received it. If we received it, we would have  
3            had it. I don't know. I don't know if I  
4            received it or not.

5       Q.    You issued this determination in January 2014,  
6            correct?

7       A.    It appears so, yes.

8       Q.    Now --

9       A.    Oh, wait a minute. So this -- this letter did  
10            come in before the determination. Okay. I'm  
11            good with that. The letter did come in before  
12            the determination was made. So we would have had  
13            this letter or should have had this letter based  
14            upon -- okay. That's better. That's good. I  
15            thought we were going the other way. I thought  
16            you were trying to tell me we had the letter  
17            after.

18      Q.    And I'll just have to take that back.

19      A.    That's all right.

20      Q.    Now, having read that, did you agree with his  
21            determination that Mr. Gorman had a fear of  
22            work-related threats?

23      A.    Well, this is basically what Mr. Gorman is  
24            relaying to him. Mr. Gorman relayed a fear of

1           returning to work. Here it says he's fearful to  
2           return to work due to safety issues in the  
3           correctional facility. It's probably the safest  
4           place to be. John Gorman worked in an office  
5           making keys. He had a sergeant and everybody all  
6           around him. How is somebody going to attack him?  
7           There's correctional officers all over.

8       Q.    I ask the questions, you give the answers, but  
9           remember there was an allegation of that -- well,  
10          not an allegation. It was shown that someone --  
11          that Mr. Patricelli called Mr. Gorman and  
12          threatened to break his fucking jaw.

13                So to the extent we're going to have a  
14          debate on safety, that's an open debate, but  
15          that's not going to happen because I'm going to  
16          ask the questions and you're going to give the  
17          answers, if you have them.

18               MR. MARTIN: You did ask him if he agreed.

19       A.    I mean, basically this here -- to answer your  
20          question, Mr. Gorman relayed a fear of returning  
21          to work. He's relaying this to Dr. Thalmann.  
22          Dr. Thalmann is not saying Mr. Gorman is  
23          traumatized by work, because here's the reason  
24          this is. I don't see that. "He remains fearful



1 of returning to work and tends to dwell on events  
2 leading up to present circumstances." If I were  
3 to read that, I would put more weight on  
4 Dr. McIntyre's report.

5 And like I said before, Dr. McIntyre always  
6 doesn't agree with us. We've had Dr. McIntyre  
7 rule against us in situations. So it's not like  
8 we're going to Dr. McIntyre because we know he's  
9 our buddy. We go to him because we're looking  
10 for a professional opinion.

11 Q. Now, Mr. Gorman, was he -- his status at this  
12 time, was he a provisional sergeant?

13 MR. MARTIN: At what time?

14 MR. SORSBY: We're talking from the period  
15 of October 2012 to February.

16 Q. Do you understand he had a provisional status?

17 A. I don't know his status, but I know Mr. Gorman  
18 was a provisional sergeant at one time. He was  
19 appointed provisional, along with another  
20 correctional officer that was appointed  
21 provisional. You know, they had to take the  
22 sergeant's test, civil service sergeant's test  
23 and pass that to where they were eligible to be  
24 reached to keep the position.

1           So I don't know if, at the time we're  
2           talking about, if Gorman was provisional or not.  
3           I know he did not pass the sergeant's test in the  
4           manner where we could get him, where he was  
5           eligible to be promoted, so we had to move him  
6           back to correctional officer.

7           Q.    I'm going to show you a different exhibit now.  
8                I'm going to show you what's been marked as  
9                Exhibit 21.

10          A.    Yeah.

11          Q.    Did there come a time Dr. McIntyre had a  
12                conversation with you regarding the 207-c  
13                application?

14          A.    I believe Dr. McIntyre might have had a  
15                conversation with us when we submitted the  
16                paperwork, but I don't recall what it was.

17                Let me -- is that -- can you explain what  
18                that is?

19          Q.    Well, these have been marked as an exhibit. This  
20                is notes from Dr. McIntyre from his  
21                investigations, okay? So this was marked during  
22                his deposition. And so this would have been  
23                notes of a conversation he had.

24                It says Pat Russo, Brian Goldberger. It

1           says, "John Gorman, chosen one." Do you  
2           understand what that meant? Did you use that  
3           term or did somebody else use that term?

4       A.    Give me a second.

5       Q.    That's fine.

6       A.    I want to look this over and see if I can make  
7           any sense out of it.

8       Q.    Again, these are his notes.

9       A.    I would be guessing. Maybe he was chosen to be a  
10          sergeant and not come off a list.

11      Q.    I don't want you to speculate. If you don't  
12          know, that's an answer, too.

13      A.    I don't know. That's a question for  
14          Dr. McIntyre, right?

15      Q.    Again -- all right. Now, is -- do you have a  
16          doll in your closet that you bring out when  
17          individuals come to you, stress-related issues,  
18          like a doll?

19      A.    I have -- I don't remember the name of it. I had  
20          it in my office at the Troy P.D., but I don't  
21          bring it out when people come to my office for  
22          stress.

23      Q.    What is it? It's a doll?

24      A.    I don't even know if it's a doll. I guess it's a

1           thing with like a long, long skinny neck. And it  
2           makes noise when you shake it and it kind-of  
3           sounds like a turkey. I don't --

4       Q. Did you ever indicate that you would shake it and  
5           say, "This is how I resolve stress"?

6       A. Up in my old office I would say, "Here's my  
7           stress reliever" and shake it. It would be like  
8           a squeeze ball.

9       Q. Did you take that out when Mr. Gorman came to  
10          file 207-c benefits with you?

11      A. I don't think I would ever do that.

12      Q. You don't recall ever taking that out in his  
13          presence?

14      A. No. I mean, I don't think, no.

15      Q. All right. So that's -- do you know who  
16          Lenny Smith is?

17      A. Lenny Smith was a corrections officer that used  
18          to work for us.

19      Q. And was Mr. Smith at an interview regarding  
20          Mr. Gorman's 207-c application?

21      A. I believe Lenny Smith did come over on behalf of  
22          John Gorman at one point, yeah.

23      Q. And he came to visit you?

24      A. Yes.

1 Q. All right. And who else was at that meeting?

2 A. I don't recall. I don't even recall the meeting,  
3 but now that you said Lenny Smith, I think he did  
4 come over on John's behalf. And I don't remember  
5 if he was a union representative at the time or  
6 just somebody that wanted to come over.

7 Q. What was the purpose of the interview?

8 A. I can't remember.

9 Q. And at that time, were you told the 207-c  
10 application was work-related? Do you recall  
11 that?

12 A. Are you saying Lenny Smith told me it was  
13 related?

14 Q. Yes.

15 A. I don't recall that, no.

16 Q. Were there any other -- any other interviews  
17 that Lenny Smith was at with regards to the 207-c  
18 application, Mr. Gorman's 207-c application, or  
19 is that the only one you recall?

20 A. I recall seeing him once, but it could have been  
21 more.

22 Q. All right. Do you know a Lora Seabury?

23 A. Was that Lora Abbott?

24 Q. I think her prior name was Abbott.

1 A. Oh. She used to work at the sheriff's office,  
2 too.

3 Q. Is she still employed there?

4 A. She had a -- I believe there was a suit pending  
5 against the county.

6 Q. A suit pending against the county by Lora Abbott?

7 A. Right. I think she won a judgment against the  
8 county, I believe. Probably Goldberger would be  
9 the one to answer that question.

10 Q. Do you know what the suit was involved with?

11 A. It was a sexual harassment suit, I believe.

12 Q. Was there a time she went out on leave?

13 A. I don't recall. I definitely wasn't handling  
14 corrections. That's when we first came in, I  
15 believe. What year was that?

16 Q. I don't know. It looks like July of 2010.

17 MR. SORSBY: I'll have this marked as an  
18 exhibit.

19 (Exhibit 61 marked for identification.)

20 Q. I'm going to show you what's been marked  
21 Exhibit 61. Take a look at that.

22 A. (Witness complied.)

23 Q. Having looked at that exhibit, do you understand  
24 Lora Abbott is still employed by the sheriff's

1 department?

2 A. Let me look at this a minute. I know  
3 she's saying -- let's see. "9/13/2015, I,  
4 Lora Seabury, affirm that as of 10/13/15, I have  
5 not been officially advised of any termination  
6 from the Rensselaer County sheriff's department."  
7 I don't know if that's true or not.

8 Q. Can you tell, is that a notarized statement?

9 A. Yes, it is.

10 Q. Can you flip over that page? What is that?

11 A. It looks like a paycheck in the amount of  
12 nothing.

13 Q. Who is it from?

14 A. Rensselaer County Bureau of Finance.

15 Q. And you don't believe -- do you believe she's  
16 still employed after reading that?

17 A. Well, I don't know - you know - if it's something  
18 that didn't come out of the computer. I'd have  
19 to research that before I gave you an answer.

20 Q. Do you know when she stopped working, physically,  
21 at the jail?

22 A. No, I don't.

23 Q. Do you understand that -- okay. Okay. All  
24 right.

1                   Now, did you understand that there came a  
2                   time where Mr. Gorman went out on unpaid leave?

3           A.    I believe there was.

4           Q.    And what do you understand the reason for him  
5                   going out on leave to be?

6           A.    I believe at some point in time, he was brought  
7                   back to the facility to work. And he didn't want  
8                   to do the work, and then he was put out. I'd  
9                   have -- I don't know without looking at some  
10                  paperwork. The gist of it is I think he came  
11                  back to work in the facility. He didn't want to  
12                  work and he wasn't ready to come back, but I  
13                  don't know for sure.

14          Q.    Do you understand he went out for a medical  
15                  reason?

16          A.    Not 207-c.

17          Q.    No, I understand that, but he was out on unpaid  
18                  leave, but do you understand the reason for him  
19                  not being at work was a medical reason?

20          A.    Was he claiming psychological stress?

21          Q.    I'm asking you.

22          A.    I don't know. I'd have to look at something.

23          Q.    Okay.

24                   MR. SORSBY: I'll have this marked as an



1 exhibit.

2 (Exhibit 62 marked for identification.)

3 Q. I'm going to show you what's been marked as  
4 Exhibit 62.

5 A. Okay.

6 Q. Do you recognize this document?

7 A. It's a letter to John Gorman from Sheriff Jack  
8 Mahar.

9 Q. This letter is from you. What is the purpose of  
10 this letter?

11 A. It's to tell Mr. Gorman that his employment is  
12 going to be terminated effective July 14, 2014,  
13 basically.

14 Q. Did the sheriff direct you to send this letter?

15 A. It's actually from the sheriff. He signed it.

16 Q. I thought you had signed it?

17 A. No.

18 Q. My apologies. Did the sheriff consult with you  
19 or talk with you about the letter before he sent  
20 it?

21 A. I'm sure we talked about it. If you're going to  
22 terminate somebody, we're going to talk about it,  
23 but I don't recall the gist of the conversation  
24 other than we talked about the case.

1 Q. When you read it to yourself, did you read  
2 something about a right to a due process hearing?

3 A. Yes.

4 Q. And do you know if Mr. Gorman requested a due  
5 process hearing?

6 A. I do not.

7 Q. All right. You can put that down.

8 MR. SORSBY: I'll have this marked as the  
9 next exhibit.

10 (Exhibit 63 marked for identification.)

11 Q. So you don't recall the due process --  
12 scheduling a due process hearing for Mr. Gorman?

13 A. Do you have a written request from him, a copy of  
14 a written request from him?

15 Q. Why don't you look at Exhibit 63?

16 A. Okay.

17 Q. Can you tell us if you recognize this document?

18 A. Apparently it's a letter that we sent out to  
19 Mr. Gorman advising him that a due process  
20 hearing is scheduled for August 15, 2014.

21 Q. Who sent this letter?

22 A. I signed the letter. Marcelle probably sent it  
23 out. We copied Matthew Ryan and New York State  
24 Law Enforcement Association, Council 82.

1 Q. So you wrote this letter -- do you know if you  
2 wrote this letter?

3 A. No, I didn't write it. Brian Goldberger or maybe  
4 Marcelle wrote it. I signed it.

5 Q. It's signed by you. So you reviewed it, yes?

6 A. Yes. I reviewed it.

7 Q. I'll take that back from you real quick. Now, it  
8 says that due process is scheduled for  
9 August 14th at 9:30. Were you at that due  
10 process hearing?

11 A. I don't believe so. I don't recall.

12 Q. Now, what is your understanding of Section 73 of  
13 the civil service law in regards to?

14 A. Termination?

15 Q. Yes.

16 A. I based my decision on advice of counsel,  
17 Brian Goldberger. I depend on him for advice on  
18 matters of that nature.

19 Q. Okay. So you're saying whether somebody is  
20 terminable under Section 73 of the civil service  
21 law, you --

22 A. Brian Goldberger will give me a determination on  
23 that. I mean, if you had to research a law, I  
24 know how to research a law, but I mean, in cases

1           like this, we work along with Brian and he  
2           advises us.

3           Q.   It's ultimately the sheriff's decision to  
4           terminate somebody, is it not?

5           A.   Yes.

6           Q.   It's also your decision in some cases to  
7           terminate an employee, isn't it?

8           A.   It could be, but I can't think of a situation  
9           where I would make a determination without  
10          consulting with the sheriff. For the most part,  
11          unless he was dead or incapacitated, I probably  
12          would defer to him.

13                   MR. SORSBY: Let's mark this.

14                   (Exhibit 64 marked for identification.)

15          Q.   Now, I just want to be clear.

16                   MR. SORSBY: Well, go ahead and get this  
17          marked as an exhibit, too.

18                   (Exhibit 65 marked for identification.)

19          Q.   You testified before you don't recall being at  
20          the due process hearing. I want you to look  
21          under "also present".

22          A.   Okay.

23          Q.   Do you see your name there?

24          A.   Yes, I do.

1 Q. Now, having read that, do you now recall whether  
2 or not you were at the due process hearing?

3 A. Well, I apparently was, because I have some  
4 testimony here.

5 Q. So you do now remember you were at the due  
6 process hearing?

7 A. I was there, yes.

8 Q. Okay. I'll take it back from you, and then I'll  
9 ask you questions and I'll show it to you.

10 Now, are you aware Mr. Gorman filed for  
11 Workers' Compensation benefits?

12 A. I believe so.

13 Q. You were at this hearing. Are you aware that the  
14 decision by the Workers' Compensation Board was  
15 introduced as part of the record?

16 A. I don't recall that. If it's there, it probably  
17 was.

18 Q. Do you recall that the Workers' Compensation  
19 Board determined that Mr. Gorman was eligible for  
20 Workers' Compensation benefits?

21 A. I remember something to that effect, but I don't  
22 recall specifics.

23 Q. Do you recall reviewing the decision from the  
24 Workers' Compensation Board?

1 A. No.

2 Q. Okay. Now, I'm going to show you what's been  
3 marked as Exhibit 64. Do you recognize this  
4 document?

5 A. It's the document from me to Mr. Gorman.

6 Q. Go ahead and read it.

7 A. (Witness complied.) Okay. Do you want me to  
8 read the whole letter?

9 Q. Yes, please. It's a short letter.

10 A. "Dear Mr. Gorman: The sheriff has directed me  
11 and authorized me to send this correspondence to  
12 you. The sheriff has reviewed the transcript of  
13 the hearing that was held on August 14, 2014.  
14 Based upon my review of the transcript and your  
15 personnel file, including your attendance  
16 records, and in accordance with the applicable  
17 provisions of the New York State Civil Service  
18 Law, your employment with the Rensselaer County  
19 sheriff's office is hereby terminated effective  
20 October 1, 2014." And it's signed by me.

21 Q. So I just want to clarify. It says, "The Sheriff  
22 has directed and authorized me to send this  
23 correspondence to you." "The sheriff has  
24 reviewed the transcript of the hearing which was

1           held on August 14th." And then it says, "Based  
2           on my review of the transcript and your personnel  
3           file." Is that your review or is that the  
4           sheriff's review?

5           A. I believe this was an overall -- and I believe  
6           that Brian Goldberger drafted the letter and I  
7           signed the letter, but it was based upon the  
8           decision to terminate Mr. Gorman. And I sent him  
9           the termination letter.

10          Q. I understand that. It says you were directed by  
11          the sheriff. The next paragraph. Who is the  
12          "I", is it you or the sheriff?

13          A. Again, the termination would come ultimately from  
14          the sheriff. I could decide to terminate  
15          somebody and he could say no, we're not  
16          terminating. If he decides to terminate  
17          somebody, I can't say no and not terminate them.  
18          So that's the difference. And I think that's why  
19          we put the wording in, authorized by the sheriff.

20          Q. You don't understand the second paragraph, the  
21          "I" to be you, you understand that to be the  
22          sheriff?

23          A. Right.

24          Q. Because you did not terminate Mr. Gorman, it was

1 the sheriff; is that true or not?

2 A. Yeah. The sheriff has the ultimate decision.

3 Q. He directed you to send the letter, but he  
4 decided to terminate Mr. Gorman?

5 A. That's correct. I mean, I think it was based  
6 upon advice from counsel, also.

7 Q. I know, but I want to be clear who in the letter  
8 is speaking, because it's not clear. So I wanted  
9 you on the record to say "yes" or "no" if you  
10 believed that to be your words in the second  
11 paragraph, and you don't believe they are?

12 A. I believe the sheriff had the ultimate power to  
13 terminate, and I think this letter reflected the  
14 sheriff had. Does that suffice?

15 Q. We're going to have the sheriff here later. I  
16 want to finish this up and make it crystal clear.  
17 I want to make sure who's talking here, review of  
18 the transcript, personnel files and attendance  
19 records?

20 A. I'm sure at some time I looked them over, too,  
21 but --

22 Q. And again, to my question as to who do you think  
23 you were referring to in that second paragraph  
24 where it says "I", you said you believe



1 Sheriff Mahar -- and I understand that, but I  
2 just want to make -- go ahead.

3 A. See where it says "based on my review"?

4 Q. Is that you or Sheriff Mahar?

5 A. I probably did review all the material also, but  
6 to simplify, I think the ultimate decision has to  
7 come from the sheriff, but I probably did review  
8 all the transcripts and -- or the transcript and  
9 personnel file, as did probably our counsel,  
10 also.

11 Q. Okay.

12 A. Because it says, "Based upon my review, your  
13 employment is being terminated."

14 Q. Okay. This says, "Based upon my review of the  
15 transcript and personnel file, your employment  
16 will be terminated." So you may have reviewed  
17 the transcript, but again, that doesn't mean that  
18 you terminated him just because it says --

19 A. I think we established that. It says, "The  
20 sheriff has directed and authorized me to  
21 send -- ". So the sheriff is authorizing me to  
22 tell him.

23 Q. I got it.

24 A. Okay?

1 Q. Yes. Do you recall reviewing potentially -- or  
2 you may have reviewed Mr. Gorman's attendance  
3 records. Did Mr. Gorman have any attendance  
4 problems?

5 A. I can't remember. I don't remember what the  
6 records --

7 Q. And were there any -- you reviewed his personnel  
8 file. Were there any incidents in his personnel  
9 file that would be terminable, subject to  
10 termination?

11 A. Nothing that stand out, other than -- I don't  
12 think there was much there, other than when we  
13 started having these problems, but I don't  
14 recall.

15 Q. Now, you're the undersheriff. Do you know if  
16 Mr. Gorman was ever disciplined?

17 A. I can't say for sure. I don't think so, but I  
18 don't know for sure.

19 Q. What is it in Mr. Gorman's personnel file that  
20 would subject him to termination, if you know?

21 A. I don't know.

22 Q. Do you know if -- kind of getting away from this  
23 for a moment. Do you know if Mr. Patricelli was  
24 ever disciplined for being -- for tardiness or

1 for attendance issues?

2 A. I don't know.

3 Q. Do you know if he was disciplined for any other  
4 reasons?

5 A. I'm not sure, no.

6 Q. Now, are you aware that Section 73 of the civil  
7 service law indicates that the sheriff's office  
8 may terminate an employee that's been out of work  
9 for a year or more?

10 A. I'm not that familiar with the law. I'd have to  
11 rely on counsel for advice in that situation.

12 Q. All right. Do you know -- can you tell us --  
13 are you aware of employees of the sheriff's  
14 department that have been out for more than a  
15 year on unpaid leave?

16 A. Offhand, I couldn't. Offhand, I don't know.

17 Q. All right. Are you familiar with -- strike  
18 that. Let me ask a different question. Do you  
19 know if Mr. Gorman was provided an accommodation  
20 of any kind so he could come back to work? He  
21 was out on unpaid leave, but was he provided an  
22 accommodation?

23 A. I don't know.

24 Q. Okay.

1 MR. SORSBY: I'm going to take a quick  
2 minute break to see where we're at. I'll be right  
3 back.

4 (Whereupon, a brief recess was taken.)

5 MR. SORSBY: Back on the record.

6 Q. Now, can you tell us, Undersheriff Russo, why  
7 Anthony Patricelli, after being convicted of a  
8 crime for looking up the E-justice system, after  
9 being charged with making a threat to Mr. Gorman,  
10 after the disciplinary matters we discussed  
11 earlier today, why is it that Mr. Patricelli was  
12 not fired and Mr. Gorman was?

13 A. It's a question for the sheriff.

14 Q. Okay. Now, you said earlier, however, you're  
15 responsible for everybody the sheriff is  
16 responsible for?

17 A. Yes. Generally speaking, yes.

18 Q. You weren't responsible for that decision?

19 A. No. I think that decision, again, like I  
20 testified before, termination or whatever, would  
21 come from the sheriff. I can make a decision and  
22 he can override it. He can make a decision and I  
23 can't override his.

24 Q. You had all the information in regards to the

1 E-justice system?

2 A. Some of it. Like I testified to before, also,  
3 they were reporting to the sheriff. I didn't  
4 know all the facts, but I knew the gist of it.

5 Q. You had all the incident reports in regards to  
6 Mr. Gorman, and you seen the State Police report  
7 regarding the threat Mr. Patricelli made against  
8 Mr. Gorman. Did you make a recommendation to the  
9 sheriff that Anthony Patricelli be terminated?

10 MR. MARTIN: Object to the form.

11 A. I don't believe so.

12 Q. And would it be permissible for you to make such  
13 a recommendation?

14 A. I guess it would be possible to do that.

15 Q. And why, in this case, did you not make a  
16 recommendation for termination?

17 A. I don't know. I didn't, I guess.

18 Q. Did you -- now, did you believe that termination  
19 was warranted for Mr. Patricelli?

20 A. I didn't know all the facts. I knew some of the  
21 facts. So I wouldn't answer that question unless  
22 I knew all the facts.

23 Q. Do you believe he should have been terminated for  
24 the misuse of the E-justice system?

1 A. I didn't know all the facts of the investigation,  
2 so I wouldn't make that decision.

3 Q. You did say that you were there at the PESH  
4 investigation, the first one?

5 A. Right.

6 Q. And you did see the PESH investigative record and  
7 their conclusions, correct?

8 A. Right.

9 Q. And I recall earlier you testified that you  
10 believe the violation of the E-justice system  
11 violated DCJS regulations and FBI regulations,  
12 correct?

13 A. Yes.

14 Q. You're saying you didn't have enough facts, but  
15 you had sufficient facts to know he committed a  
16 crime; isn't that true?

17 A. Right.

18 Q. He was convicted of that?

19 A. Yes.

20 Q. So based on the fact that he was convicted of a  
21 misdemeanor for abuse of the E-justice system, do  
22 you believe he should have been terminated?

23 MR. MARTIN: Object to the form.

24 A. Yeah. I don't have an opinion at this time.

1 Q. Do you believe that he should have been --  
2 Mr. Patricelli should have been terminated for  
3 calling Mr. Gorman at work and threatening to  
4 break his jaw?

5 MR. MARTIN: Object to the form.

6 A. I, again, don't -- I don't know. I don't know.  
7 I would say "no" for that. I probably would say  
8 "no". No. I mean, people argue. People have  
9 disagreements all the time at work. I don't know  
10 if that was an actual "I'm going to break your  
11 jaw" or "I could break your jaw" or whatever,  
12 without getting back into that and looking at the  
13 investigation report over again. I really said  
14 I'd be leaning toward "no" for termination for  
15 that incident itself.

16 Q. While we're on that, do you recall that you were  
17 here for the deposition of Trooper Hock?

18 A. Yes.

19 Q. Do you recall she spoke to Mr. Patricelli and she  
20 recorded what she said?

21 A. Right. She did a written record.

22 Q. Right. And he said, "If I had a problem big  
23 enough, I would come and break your fucking jaw",  
24 right?

1 A. Right.

2 Q. Now, you're the undersheriff. Under what  
3 circumstances is it okay to break one of the  
4 employee's of the sheriff's department's jaw for  
5 a problem?

6 A. It's not, but again, what she wrote down, "If I  
7 had a problem, I would come and break" -- that's  
8 leaning -- that's kind of leaning me to believe,  
9 like, I don't have a problem, or if I did, I  
10 would do that. That's not like, "I'm going to  
11 come over there and break your jaw." That's  
12 like, "If I've got a problem, I can come over  
13 there. I have the capability if I have a  
14 problem, but I don't have a problem, so I'm not  
15 going to do that."

16 That's how you can imply from that both  
17 ways, and that's why I said I don't think it's a  
18 situation where termination -- I wouldn't have  
19 recommended termination in that case.

20 Q. So he's saying if there was a problem big enough,  
21 he would come over there and --

22 A. That's what I think the Trooper had in her  
23 report. I don't have that in front of me right  
24 now.



1 Q. We'll get it out. What I'm asking you is he's  
2 saying is if there was a problem big enough, he  
3 could come down and break his fucking jaw. I'm  
4 saying is there a problem big enough that  
5 justified Mr. Patricelli breaking Mr. Gorman's  
6 jaw?

7 A. No, but I don't know if that's an implied threat  
8 that I'm coming over to break your jaw. You  
9 know. That's almost saying I'm not going to do  
10 it, but if I wanted to do it, I would do it.

11 Let me see what we have here on paper, but  
12 that's what I think my impression was of that  
13 when it first happened, and that's kind-of what I  
14 was reading from today when I listened to the  
15 Trooper, what she said. You know.

16 MR. MARTIN: I don't have it here, I don't  
17 think.

18 MR. SORSBY: That's okay. We'll find it.

19 MR. MARTIN: I've got the internal incident  
20 report.

21 MR. SORSBY: Off the record.

22 (Discussion off the record.)

23 Q. Handing you back Exhibit 37. Do you see  
24 Trooper Hock there at the top?

1 A. I'm looking for your exhibit number.

2 Q. I'm handing you what's been marked Exhibit 37.

3 We looked at this earlier.

4 A. "If I had a big enough problem with you, I would  
5 come over there and break your jaw."

6 Q. Right. That's what Gorman said, but below that,  
7 do you see that?

8 A. Yes.

9 Q. What does it say?

10 A. "Contacted Patricelli."

11 Q. Keep going.

12 A. "He said if he had a big enough problem with him,  
13 he would come over there and break his fucking  
14 jaw."

15 So it's the same thing Gorman said, so at  
16 least they're both on the same page as telling  
17 what was said.

18 So I would say, when I read that, I would  
19 read into that, If I had a big enough problem  
20 with you. It's not, I'm going to come over there  
21 and break you jaw. It's if I had a big enough  
22 problem with you, I'd come over there and break  
23 your jaw.

24 Q. And you said that a couple times, and I'm not

1 asking about your understanding of whether or not  
2 it was a threat. I'm asking if any one of the  
3 people that you're responsible for as the  
4 undersheriff says that if the problem is big  
5 enough, they can come and commit acts of violence  
6 against another employee, is that --

7 A. Something that I would terminate somebody? No.  
8 We would probably take some kind of disciplinary  
9 action, but I don't think it would rise to the  
10 level of termination.

11 Nothing's justified, and I know zero  
12 tolerance for violence in the workplace, but you  
13 have to remember, it's a correctional facility.  
14 It's not kindergarten class. So a lot of guys  
15 know that that is -- they're going to encounter  
16 some of that along the way, as with police  
17 departments and fire departments and so forth.  
18 You're going to be in a different environment  
19 than you would be in a school.

20 Q. So what you're saying is some of it has to be  
21 tolerated; is that what you're saying?

22 A. No. I'm saying some of it's going to happen  
23 probably more often than not. You still have to  
24 maintain your zero tolerance policy and

1 discipline when appropriate, but you're not going  
2 to get as much of it reported, I think, as you  
3 would because people are just used to that  
4 environment. And that came -- that had been  
5 around for a while. You know.

6 Q. So now do you believe that Mr. Gorman should have  
7 been terminated?

8 A. Again, I'd have to -- it was done and it was  
9 done on advice of counsel, so I believe it was a  
10 proper decision.

11 Q. But what I'm asking is do you have an opinion as  
12 to whether or not --

13 A. No, I don't have an opinion at this point, no.

14 Q. Do you have -- what was your analysis of  
15 Mr. Gorman's performance while he was at the  
16 jail?

17 A. I didn't have a lot to do with Mr. Gorman. Like  
18 I said, I wasn't involved in the correctional  
19 side that much. I ran into him a few times. He  
20 was making -- he was in charge of keys, making  
21 keys. I know he is -- I think that was a good  
22 job for him, because he didn't have to interact  
23 with a lot of people. So he could take care of  
24 the key, make the keys he was suppose to make,

1 but he didn't have to interact with inmates that  
2 much or other CO's.

3 Q. Why was that important?

4 A. I think he has trouble interacting with people.  
5 I never had anything against John, but I always  
6 thought John was a little like standoff-ish or  
7 came across like he isn't easily engaged in  
8 conversation. You know.

9 And again, I don't have any -- I don't have  
10 anything against him. I know that some of the  
11 people would say -- like some of the supervisors  
12 over there would say John wasn't the best dealing  
13 with prisoners or dealing with other people, or  
14 he really didn't handle people well while he was  
15 sergeant. I don't know that to be true. I never  
16 had any complaints on him. I didn't have any  
17 problems with him. I think the key job was  
18 perfect for him.

19 Q. When was the key job given to him?

20 A. I think when he came back from sergeant. Maybe  
21 before.

22 Q. Isn't it true that you made him provisional  
23 sergeant?

24 A. You mean appointed him as provisional sergeant?

1 Q. Correct.

2 A. Sure, John and Aaron Smart. I don't know if I  
3 swore him in, but I'm sure it was the sheriff's  
4 decision to promote him.

5 Q. You said before you hadn't had much interaction  
6 with John?

7 A. I have lately, but --

8 Q. I'm talking about -- I'm trying to figure out  
9 how you came to the impression that Mr. Gorman  
10 doesn't -- your impression that he's kind of  
11 standoff-ish? Is that based on what others told  
12 you or your own --

13 A. Based on -- I never had any real complaints,  
14 just what other people said. And I like to deal  
15 with the facts, so -- you know, I never had any  
16 complaints. I never had a problem with him.

17 Q. Okay. Did you ever have an opportunity to look  
18 at any performance appraisals of Mr. Gorman?

19 A. I may have. Sometimes they would do them and  
20 forward them over. Sometimes the colonel would.  
21 At the time, Bob Loveridge would have a lineup on  
22 his desk.

23 Q. Why would you look at his performance appraisals?

24 A. They would come over in a bundle sometimes to be

1 filed. So if they were there and I happened to  
2 look through them, I'd look through them.

3 Q. Was it your duty to look through them?

4 A. I would say no, because, like I said, at one time  
5 I wasn't focused much on the correctional side,  
6 but I have from time to time seen them there and  
7 looked through them.

8 MR. SORSBY: Off the record.

9 (Discussion off the record.)

10 MR. SORSBY: Back on the record.

11 Q. Now, you do you know who Jeff Rankin is?

12 A. Jeff Rankin is a lieutenant.

13 Q. Where was he in the chain of command?

14 A. At one time, Jeff was a sergeant and then he  
15 became lieutenant. So I don't remember where he  
16 was at certain times, but as a lieutenant he  
17 would be over --

18 Q. Now, I'm going to show you what's been marked  
19 Exhibit 3. This is a performance appraisal. I  
20 bring your attention to the narrative of it by  
21 Jeff Rankin.

22 A. Okay.

23 MR. MARTIN: What exhibit number is that?

24 MR. SORSBY: Exhibit Number 3.

1 Q. Can you do me a favor? Can you read it into the  
2 record for us?

3 A. "C.O. Gorman had been a provisional supervisor  
4 from 4/30/12 until 2/15/13. He was a provisional  
5 supervisor for most of this review period until  
6 other officers were promoted from the civil  
7 service list and he returned to the rank of  
8 officer. It was a pleasure to have worked with  
9 him in the capacity of a supervisor. I feel he  
10 was doing a very good job and made sure that  
11 staff had what they needed to get their job done.  
12 He answered inmate's questions in a timely  
13 manner. He was firm, fair and consistent. He  
14 didn't overlook officer behavior that violated  
15 rules and was not afraid to enforce the rules.  
16 He was there to support officers and other  
17 supervisors. He still has a lot to learn, but is  
18 making a lot of progress. C.O. Gorman has been  
19 doing a good job since returning to the rank of  
20 officer. He assists with extra details with  
21 Sergeant Dunham, when available. These details  
22 include replacing keys and helping with computer  
23 issues. He has a good work ethic and I look  
24 forward to working with him in the future.



1 C.O. Gorman was given an oral warning on 11/23/12  
2 for not having his auxiliary weapon signed for  
3 when he returned."

4 Q. Now, sergeant -- excuse me -- Provisional  
5 Sergeant Gorman, at that time, reported to  
6 Sergeant Rankin?

7 A. I think he reported to Sergeant Rankin when he  
8 returned back to an officer. So I think what  
9 Jeff Rankin signed this for is because he  
10 returned back to an officer.

11 And it says it was a pleasure to have worked  
12 with him in his capacity as a supervisor. So I  
13 think when Jeff -- when Gorman was supervisor and  
14 Jeff was a supervisor, he's saying it was a  
15 pleasure to work with him.

16 Q. Do you understand Mr. Rankin was training  
17 Mr. Gorman as a provisional sergeant?

18 A. He may have been. I don't know.

19 Q. But again, you had limited interaction with  
20 Mr. Gorman, correct?

21 A. I did. I never had a problem with him.

22 Q. All right. Do you see the date on that, the  
23 period for the review?

24 A. It looks like October 1, 2012 to February 13,

1           2013.

2           Q.   All right.  I'll take it back from you.  Thank  
3           you.

4                   Do you recall being deposed in a matter of  
5           Ruth Vibert versus Rensselaer County?

6           A.   Yeah.  I was deposed with Vibert, yeah.

7           Q.   And do you remember saying at that deposition  
8           that Vibert lost control of the Patricelli-Gorman  
9           situation?

10          A.   I'd have to look at my testimony, if you have a  
11          copy of my testimony.

12                   MR. SORSBY:  Mark this as an exhibit.

13                   (Exhibit 66 marked for identification.)

14          Q.   Exhibit 66, do you see where the blue marker is,  
15          so it would be Line 15?

16          A.   Mm-hmm.  Okay.

17          Q.   Could you tell us how she lost control?

18          A.   I think there were a lot of contributing factors.  
19          I know at one time she was very tight with  
20          Patricelli, they got along very good, and then  
21          she got along fairly good with John.  And you  
22          know, she might have been not -- she might have  
23          let emotions there interfere with some decisions,  
24          so I think she was losing control in that sense.

1 Q. Okay. All right. I'll take that back from you.

2 MR. SORSBY: I'll have this marked as an  
3 exhibit.

4 (Exhibit 67 marked for identification.)

5 Q. All right. I'm going to hand you Exhibit 67,  
6 starting at Line 15. Can you start reading that  
7 to us, please?

8 A. Let me see what we got here. Starting at  
9 Line 15?

10 Q. Yes.

11 A. Okay. "I think it was -- well, I guess there  
12 were a lot of, again, cliques that come into play  
13 there. I don't know if she actually lost control  
14 of it, but it seemed to get sidelined. I know  
15 that she tried to talk to the sheriff several  
16 times about that situation. I saw some  
17 frustration on her part as far as the situation.  
18 We could not allow violence in the workplace, so  
19 we were trying to do whatever we had to do to  
20 stop any escalation, I should say."

21 Q. You can keep reading.

22 A. You mean on the back here?

23 Q. Mm-hmm.

24 A. Okay. "Patrick Russo by Mr. Keach: But it got

1 to be almost ridiculous. You know, somebody  
2 walking down the hall and he'll say, oh, he  
3 looked at me and smiled at me, or he's saying,  
4 you know, he gave me a nasty glance or said "good  
5 morning" to me. You know. It got ridiculous in  
6 my opinion."

7 Q. Now, you just read how it was important to you to  
8 prevent workplace violence?

9 A. Right.

10 Q. And then it said it's ridiculous. What did you  
11 mean by that, people walking down the halls?

12 A. It was ridiculous, the fact that people would  
13 consider somebody giving them a smile or not  
14 saying "hello" or walking by them with their head  
15 down as workplace violence. That was kind of  
16 like ridiculous to consider that workplace  
17 violence. I mean, if I walk by you and I happen  
18 to be in a bad mood, and you say "hello" and I  
19 don't say "hello" to you, is that workplace  
20 violence? That's where we were headed.

21 Q. What people are you talking about when you say  
22 "people"?

23 A. All people. That's what we were referring to.

24 Q. Okay. You said it was getting ridiculous because

1 people were walking down the hallways and they  
2 thought that that was workplace violence, and  
3 you're saying that that --

4 A. It got to be almost ridiculous. You know,  
5 somebody would be walking down the hall and they  
6 would say "hello" and he looked at me and smiled  
7 at me, or he said, you know, he gave me a nasty  
8 glance.

9 Q. Was that based upon an investigation that you  
10 did?

11 A. Part of it was where John, you didn't have  
12 somebody say "hello" or --

13 Q. I'm sorry. What -- you did an investigation  
14 where there's an allegation where somebody didn't  
15 say "hello"?

16 A. Let's go back. We need the exhibits for the  
17 complaints that John had.

18 Q. I tell you what --

19 A. Can we go back to them?

20 Q. No.

21 A. I'd like to see those again before I answer.

22 Q. You don't have to. I tell you what, your answer  
23 speaks for itself. You've already answered that.  
24 We have other questions for you, okay?

1 A. Okay. Good.

2 MR. SORSBY: Let's mark this, please.

3 (Exhibit 68 marked for identification.)

4 Q. All right. So I'm going to give you what's been  
5 marked Exhibit 68. Now, do you see on Line 9 --

6 A. Yes.

7 Q. It says that -- can you go ahead and read from  
8 Line 9 down for us?

9 A. "The question: When Ms. Vibert, on the evening  
10 that Mr. Gorman had brought to her attention  
11 about Mr. Patricelli's threats, did she tell you  
12 that the sheriff had flipped out on the phone?"

13 "I believe there was a conversation to that  
14 effect. You know."

15 "All right. What?"

16 "I know it was, I mean, how long ago. I  
17 don't know the exact conversation."

18 "Tell me what you remember?"

19 "I remember her saying that she got into an  
20 argument with the sheriff on the phone and he  
21 didn't want to bring that into the workplace. I  
22 don't recall at the time she told me she was  
23 going to have him go to the police and have a  
24 police report filed, but I would have suggested

1           that. I would have said, "Have a police report  
2           done", but I don't recall, it was so long ago."

3           Q. Now, why did the sheriff blow up, in your words?

4           A. I think what he was saying is that wasn't --  
5           don't bring the outside -- the outside drama into  
6           the sheriff's office.

7           Q. It says there was a disagreement between Vibert  
8           and the sheriff. Do you recall that?

9           A. Yes. I think she was trying to call him to tell  
10          him about the incident where Patricelli had  
11          called John, and he didn't want to bring that.  
12          He's saying that has nothing to do with the  
13          sheriff's office. Don't bring that into the  
14          workplace.

15                 I told her -- and I mean, by looking at  
16          this, I seem to say that here. I one time said  
17          to her -- I said, he can go and make a criminal  
18          complaint for aggravated harassment, and that's  
19          what she advised him to do, to go to the troopers  
20          and make a criminal complaint. I advised her to  
21          tell him to do that. She did tell him to do  
22          that, and I'm sure she did advise him.

23          Q. Now, you believe it's because he didn't want what  
24          is, in his mind, an unrelated work incident to be

1 brought into work; is that what you're saying?

2 A. That's what I believe the question is.

3 Q. You don't believe it's because

4 Sergeant Patricelli and Sheriff Mahar were close  
5 friends?

6 A. I mean, I don't think so, because it was going to  
7 happen anyway. So he just didn't want it to be  
8 brought into the sheriff's office.

9 Q. What was going to happen anyway?

10 A. The complaint. It was going to happen anyway.  
11 If he went to the police, what's the difference?  
12 Because Patricelli is the sheriff's friend, if he  
13 went to the police, he's still going to be the  
14 sheriff's friend.

15 Q. I'm asking you whether or not you believe the  
16 sheriff was upset because there's an allegation  
17 that his friend threatened Mr. Gorman, another  
18 employee?

19 MR. MARTIN: Object to the form.

20 A. Yeah. I don't know. I mean, I don't know how to  
21 answer it. I can't answer for the sheriff, but I  
22 don't think -- the sheriff had no control over  
23 Patricelli, so Patricelli's actions were his own  
24 actions.



1 Q. You said he has no control over Patricelli. He  
2 was his boss. He has a significant amount of  
3 control, does he not?

4 MR. MARTIN: Object to the form.

5 Q. What kind of control did the sheriff have over  
6 Anthony Patricelli as his supervisor?

7 A. Yeah, but we're talking about Patricelli calling  
8 him at his house. The sheriff doesn't have -- I  
9 don't want to get into defending the sheriff,  
10 Patricelli, anybody here, but what I'm just  
11 saying is how much control do you have over a  
12 person? You know. I'm people down there's boss  
13 too, and do I have control over somebody that  
14 goes home tonight and happens to shoot their wife  
15 or shoot their husband? I have no control over  
16 that.

17 Q. You read the workplace violence policy for  
18 Rennselaer County earlier, and you said it  
19 includes violence or allegations of violence  
20 outside of work?

21 A. Yeah.

22 Q. And so do you not believe that the sheriff has  
23 the ability to terminate people that make threats  
24 of violence against workers of the sheriff's

1 department?

2 A. All the way at the opposite end -- I mean, I'm  
3 sure the sheriff has the ability to terminate  
4 somebody. It's easier said than done. I don't  
5 think the fact that you say I -- if I had a  
6 problem with you, I could come over there and do  
7 this. I don't think that's a situation where  
8 somebody should be terminated for that.

9 I myself, and this is my opinion, but I  
10 don't perceive that as a threat that he says,  
11 "I'm going to come over and break your jaw."  
12 It's, "If I have a problem with you, I'm going to  
13 break your jaw." If you perceive that as a  
14 threat, we have different opinions of a threat.  
15 It's not a situation where you terminate somebody  
16 for it, and that's my own opinion.

17 Q. So again, you didn't believe that that was a  
18 legitimate threat; is that what I'm  
19 understanding?

20 A. I didn't believe it was a legitimate threat. If  
21 he would have went over there and showed up at  
22 the house or something to follow through with a  
23 threat like that -- I don't think the fact that  
24 you say, if I had a problem with you, I'd let you

1 know. If I had a problem with you, I'd let you  
2 know. Is that a threat? I don't think so, in my  
3 opinion.

4 Q. It sounds like you understand a threat requires  
5 some type of affirmative action in addition to  
6 it?

7 MR. MARTIN: Object to the form.

8 MR. SORSBY: You can still answer.

9 A. What I'm saying is -- here's my thoughts on that.  
10 If I said, If I had a problem with you, I'd let  
11 you know. I don't perceive that as a threat. I  
12 mean, maybe you do, and that's why everybody has  
13 different opinions.

14 But getting back to answering your question,  
15 I don't think that situation warranted  
16 termination, and that's my opinion.

17 Q. All right. Do you believe that it was a  
18 violation of the county's workplace violence  
19 policy?

20 MR. MARTIN: Object to the form.

21 A. It probably was. It probably could be.

22 MR. SORSBY: Since we have been talking  
23 about the transcript, I'm going to have the  
24 transcript itself marked as an exhibit.

1 (Exhibit 69 marked for identification.)

2 MR. SORSBY: I'm going to take a quick  
3 two-minute break and then we'll wrap up.

4 (Whereupon, a brief recess was taken.)

5 MR. SORSBY: So go ahead and call this for  
6 today, 5:27 p.m.. So we finished with  
7 thirty-three minutes left.

8 (Whereupon, the Examination concluded at  
9 5:27 p.m.)

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1 STATE OF NEW YORK

2 COUNTY OF \_\_\_\_\_

3  
4 I have read the foregoing record of my testimony  
5 taken at the time and place noted in the heading hereof  
6 and I do hereby acknowledge it to be a true and correct  
7 transcript of the same.

8  
9  
10 \_\_\_\_\_  
11 UNDERSHERIFF PATRICK RUSSO  
12  
13

14 Sworn to before me this  
15 \_\_\_\_\_ day of \_\_\_\_\_, 2015.  
16  
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18 \_\_\_\_\_  
19 Notary Public  
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C E R T I F I C A T I O N

I, NORA B. LAMICA, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby CERTIFY that prior to being examined, the witness named in the foregoing deposition was duly sworn to testify the truth, the whole truth, and nothing but the truth.

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced by me to typewritten form and that the same is true, correct, and complete of said proceedings.

Before completion of the deposition, review of the transcript was requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not interested in the outcome of this matter.

Witness my hand this 18th day of November, 2015.

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NORA B. LAMICA